

No. B295935

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION EIGHT**

CITY OF SANTA MONICA,

Appellant-Defendant,

v.

PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA,

Respondents-Plaintiffs.

**DECLARATION OF KAHN SCOLNICK IN SUPPORT OF
APPELLANT'S MOTION FOR CALENDAR PREFERENCE;
SUPPORTING EXHIBITS**

Appeal from the Superior Court for the County of Los Angeles

The Hon. Yvette M. Palazuelos, Judge Presiding

Superior Court Case No. BC616804

Gov't Code, § 6103

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Attorneys for Appellant-Defendant, City of Santa Monica

DECLARATION OF KAHN SCOLNICK

I, Kahn Scolnick, declare as follows:

I am a partner with the law firm Gibson, Dunn & Crutcher LLP, counsel for the City of Santa Monica (the “City”) in the above-referenced case. I am authorized to practice law in the State of California and submit this declaration in support of the City’s motion for calendar preference dated April 29, 2019. The following matters are based upon my personal knowledge, and if called to testify to such facts, I could and would do so competently.

1. Attached hereto as Exhibit A is a true and correct copy of the trial court’s judgment dated February 13, 2019.

2. Attached hereto as Exhibit B is a true and correct copy of this Court’s Stay Order, dated March 27, 2019, granting the petition for writ of supersedeas and stating that “Paragraph 9 of the judgment entered on February 13, 2019 operates as an automatic stay pending the disposition of this appeal.”

3. Attached hereto as Exhibit C is a true and correct copy of the trial court’s Tentative Decision dated November 8, 2018.

4. Attached hereto as Exhibit D is a true and correct copy of the City of Santa Monica’s Request for Statement of Decision dated November 15, 2018.

5. Attached hereto as Exhibit E is a true and correct copy of the trial court’s Order dated November 28, 2018, requiring Plaintiffs to file and serve a Proposed Statement of Decision.

6. Attached hereto as Exhibit F is a true and correct copy of the Plaintiffs' Proposed Judgment, lodged with the trial court on or around January 3, 2019.

7. Attached hereto as Exhibit G is a true and correct copy of the Plaintiffs' Proposed Statement of Decision, lodged with the trial court on or around January 3, 2019.

8. Attached hereto as Exhibit H is a true and correct copy of the City's Objections to Plaintiffs' Proposed Statement of Decision dated January 18, 2019.

9. Attached hereto as Exhibit I is a true and correct copy of the trial court's order dated February 13, 2019, overruling the City's Objections to Plaintiffs' Proposed Judgment.

10. Attached hereto as Exhibit J is a true and correct copy of the trial court's ruling dated February 13, 2019, regarding the City's Objections to Plaintiffs' Proposed Statement of Decision.

11. Attached hereto as Exhibit K is a true and correct copy of the City's Notice of Appeal dated February 22, 2019.

12. Attached hereto as Exhibit L is a true and correct copy of the trial court's order dated March 6, 2019, denying the City's Ex Parte Application (A) To Confirm that Paragraph 9 of the February 9, 2013 Judgment Is a Mandatory Injunction and Thus Stayed Pending Appeal; Or (B) In the Alternative, To Stay, Pending Appeal, the Enforcement of Paragraph 9.

13. Attached hereto as Exhibit M is a true and correct copy of the City's Petition for Writ of Supersedeas or Other Extraordinary Relief dated March 8, 2019.

14. Attached hereto as Exhibit N is a true and correct

copy of the Los Angeles County Registrar-Recorder/County Clerk's correspondence with the Clerk of the City of Santa Monica regarding the "Estimated Cost for a July 2, 2019 Standalone Election."

15. I reached out to counsel for Plaintiffs on April 24, 2019, to ask whether Plaintiffs would oppose this motion. Counsel for Plaintiffs stated, among other things, that "Plaintiffs too would like to see a prompt resolution of Defendant's appeal," but did not state whether Plaintiffs would oppose this motion. On April 26, 2019, I sent counsel for Plaintiffs a draft of this motion. As of this filing, Plaintiffs have not indicated whether they will oppose this motion or file anything in response.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on April 29, 2019 in New York, New York.



Kahn Scolnick

PROOF OF SERVICE

I, Daniel Adler, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071-3197, in said County and State. On April 29, 2019, I served the following document(s):


**DECLARATION OF KAHN SCOLNICK IN SUPPORT OF
APPELLANT'S MOTION FOR CALENDAR PREFERENCE;
SUPPORTING EXHIBITS**

on the parties stated below, by the following means of service:

SEE ATTACHED SERVICE LIST

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 29, 2019, in Los Angeles, California.


Daniel Adler

Respondents' Counsel**Method of service**

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Trial court

Hon. Yvette M. Palazuelos
Judge Presiding
Los Angeles County Superior Court
312 North Spring Street
Los Angeles, CA 90012
Tel: 213-310-7009

Mail service

EXHIBIT A

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FILED
Superior Court of California
County of Los Angeles

FEB 13 2019

Sherri R. Carter, Executive Officer/Clerk
By Neil M. Raya Deputy
Neil M. Raya

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION,)	Case No.: BC616804
et al.)	
)	
Plaintiffs,)	JUDGMENT; ATTACHMENT
)	
vs.)	
)	
CITY OF SANTA MONICA,)	
)	
Defendant.)	
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)	

The Court finds as follows:

Plaintiff Maria Loya is registered to vote, and resides in the City of Santa Monica, California. She is a member of a "protected class" as that term is defined in California Elections Code Section 14026. Plaintiff Pico Neighborhood Association is an organization with members who, like Maria Loya, reside in Santa Monica, are registered to vote, and are

1 members of a protected class. Plaintiff Pico Neighborhood
2 Association's organizational mission is germane to the subject
3 of this case - namely, advocating for the interests of Pico
4 Neighborhood residents, including to the city government, where
5 Latinos are concentrated in Santa Monica.

6 Defendant is a political subdivision as that term is
7 defined in California Elections Code Section 14026. The
8 governing body of Defendant is the City Council of Santa Monica,
9 California. The City Council of Santa Monica, California is
10 elected by an "at large method of election" as that term is
11 defined in California Elections Code Section 14026.
12

13 Plaintiffs have demonstrated that elections in Santa
14 Monica, namely elections for Defendant's city council involving
15 at least one Latino candidate, are consistently and
16 significantly characterized by "racially-polarized voting" as
17 that term is defined in California Elections Code Section 14026.
18

19 • Analyzing elections over the past twenty-four years, a
20 consistent pattern of racially-polarized voting emerges. In
21 most elections where the choice is available, Latino voters
22 strongly prefer a Latino candidate running for Defendant's city
23 council, but, despite that support, the preferred Latino
24 candidate loses. As a result, though Latino candidates are
25 generally preferred by the Latino electorate in Santa Monica,
only one Latino has been elected to the Santa Monica City

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1 Council in the 72 years of the current election system - 1 out
2 of 71 to serve on the city council.

3 • Though not necessary to show a CVRA violation,
4 Plaintiffs have also demonstrated other factors supporting the
5 finding of a violation of the CVRA, pursuant to Elections Code
6 section 14028(e), including a history of discrimination in Santa
7 Monica; the use of electoral devices or other voting practices
8 or procedures that may enhance the dilutive effects of at-large
9 elections; that Latinos in Santa Monica bear the effects of past
10 discrimination in areas such as education, employment, and
11 health, which hinder their ability to participate effectively in
12 the political process; the use of overt or subtle racial appeals
13 in political campaigns; and a lack of responsiveness by the
14 Santa Monica city government to the Latino community
15 concentrated in the Pico Neighborhood.
16

17 In the face of racially polarized voting patterns of the
18 Santa Monica electorate, Defendant has imposed an at-large
19 method of election in a manner that impairs the ability of
20 Latinos to elect candidates of their choice or influence the
21 outcome of elections, as a result of the dilution or the
22 abridgment of the rights of Latino voters.
23

24 The City of Santa Monica amended its charter in 1946,
25 adopting its current council-manager form of government and
current at-large election system. The precise terms of that

1 charter amendment, and specifically the form of elections to be
2 employed, were decided upon by a Board of Freeholders. In 1992,
3 Defendant's city council rejected the recommendation of the
4 Charter Review Committee to scrap the at-large election system.
5 In each instance, the adoption and/or maintenance of at-large
6 elections was done with a discriminatory purpose, and has had a
7 discriminatory impact.

8 The CVRA does not require the imposition of district-based
9 elections. The Court considered cumulative voting, limited
10 voting and ranked choice voting as potential remedies to
11 Defendant's violation of the CVRA. Plaintiffs presented these
12 at-large alternatives for the Court's consideration, but both
13 Plaintiffs and Defendant agreed that the most appropriate remedy
14 would be a district-based remedy. While the Court finds that
15 each of these alternatives would improve Latino voting power in
16 Santa Monica, the Court finds that the imposition of district-
17 based elections is an appropriate remedy to address the effects
18 of the established history of racially-polarized voting.

19 During the trial, Plaintiffs' expert presented a district
20 plan. That district plan included a district principally
21 composed of the Pico Neighborhood, where Santa Monica's Latino
22 community is concentrated. Districts drawn to remedy a
23 violation of the CVRA should be nearly equal in population, and
24 should not be drawn in a manner that may violate the federal
25

1 Voting Rights Act. Other factors may also be considered -- the
2 topography, geography and communities of interest of the city
3 should be respected, and the districts should be cohesive,
4 contiguous and compact. Elections Code Section 21620.

5 Districts drawn to remedy a violation of the CVRA should not be
6 drawn to protect current incumbents. Incumbency protection is
7 generally disfavored in California. California Constitution
8 Art. XXI Section 2(e). The place of residence of incumbents or
9 political candidates is not one of the considerations listed in
10 Section 21620 of the Elections Code. Race should not be a
11 predominant consideration in drawing districts unless necessary
12 to remedy past violation of voting rights. The district plan
13 presented by Plaintiffs' expert properly takes into
14 consideration the factors of topography, geography,
15 cohesiveness, contiguity and compactness of territory, and
16 community of interest of the districts, and race was not a
17 predominant consideration.
18

19 The current members of the Santa Monica City Council were
20 elected through unlawful elections. The residents of the City
21 of Santa Monica deserve to have a lawfully elected city council
22 as soon as is practical. The residents of the City of Santa
23 Monica are entitled to have a council that truly represents all
24 members of the community. Latino residents of Santa Monica,
25 like all other residents of Santa Monica, deserve to have their

1 voices heard in the operation of their city. This can only be
2 accomplished if all members of the city council are lawfully
3 elected. To permit some members of the council to remain who
4 obtained their office through an unlawful election may be a
5 necessary and appropriate interim remedy but will not cure the
6 clear violation of the CVRA and Equal Protection Clause.

7
8 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

9 1. Defendant violated the California Voting Rights Act,
10 California Elections Code Sections 14025 - 14032;

11 2. Defendant's plurality at-large elections for its City
12 Council violate Elections Code Sections 14027 and 14028;

13 3. Defendant violated the Equal Protection Clause of the
14 California Constitution, California Constitution, Article I
15 Section 7;

16 4. Defendant's plurality at-large elections for its City
17 Council violate the Equal Protection Clause of the California
18 Constitution;

19 5. Defendant is permanently enjoined from imposing,
20 applying, holding, tabulating, and/or certifying any further at-
21 large elections, and/or the results thereof, for any positions
22 on its City Council;

23 6. Defendant is permanently enjoined from imposing,
24 applying, holding, tabulating, and/or certifying any elections,
25

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1 and/or the results thereof, for any positions on its City
2 Council, except an election in conformity with this Judgment;

3 7. All further elections, from the date of entry of this
4 Judgment for any seats on the Santa Monica City Council, shall
5 be district-based elections, as defined by the California Voting
6 Rights Act, in accordance with the map attached hereto. The
7 metes and bounds of each district, as depicted in the map are
8 described using TIGER line segments (used to define census block
9 geography) as follows:
10

11 District #1

12 The region bounded and described as follows:

13 Beginning at the point of intersection of Alley between
14 Princeton and Harvard and Broadway, and proceeding southerly
15 along Alley between Princeton and Harvard to Colorado Ave, and
16 proceeding northerly along Colorado Ave to Stewart St, and
17 proceeding southerly along Stewart St to Olympic Blvd, and
18 proceeding easterly along Olympic Blvd to City Boundary, and
19 proceeding easterly along City Boundary to Pico Blvd, and
20 proceeding westerly along Pico Blvd to 22nd St, and proceeding
21 southerly along 22nd St to Alley south of Pico Blvd, and
22 proceeding westerly along Alley south of Pico Blvd to 20th St,
23 and proceeding northerly along 20th St to Pico Blvd, and
24 proceeding westerly along Pico Blvd to Lincoln Blvd, and
25 proceeding northerly along Lincoln Blvd to Broadway, and

1 proceeding easterly along Broadway to Alley between 9th and 10th
2 St, and proceeding northerly along Alley between 9th and 10th St
3 to Santa Monica Blvd, and proceeding easterly along Santa Monica
4 Blvd to 16th St, and proceeding southerly along 16th St to
5 Broadway, and proceeding easterly along Broadway to Alley
6 between 17th and 18th St, and proceeding southerly along Alley
7 between 17th and 18th St to Colorado Ave, and proceeding
8 northerly along Colorado Ave to Alley between 19th and 20th St,
9 and proceeding northerly along Alley between 19th and 20th St to
10 Broadway, and proceeding northerly along Broadway to the point
11 of beginning.
12

13 District #2

14 The region bounded and described as follows:

15 Beginning at the point of intersection of City Boundary and
16 Pico Blvd, and proceeding southerly along City Boundary to NE
17 boundary of Census Block 060377022021010, and proceeding
18 westerly along NE boundary of Census Block 060377022021010 to
19 11th St, and proceeding northerly along 11th St to Marine Pl N,
20 and proceeding westerly along Marine Pl N to Alley east of
21 Lincoln Blvd, and proceeding westerly along Alley east of
22 Lincoln Blvd to Pier Ave, and proceeding westerly along Pier Ave
23 to Lincoln Blvd, and proceeding westerly along Lincoln Blvd to
24 Hill Pl N, and proceeding easterly along Hill Pl N to 11th St,
25 and proceeding northerly along 11th St to Pico Blvd, and

1 proceeding easterly along Pico Blvd to 20th St, and proceeding
2 southerly along 20th St to Alley south of Pico Blvd, and
3 proceeding easterly along Alley south of Pico Blvd to 22nd St,
4 and proceeding northerly along 22nd St to Pico Blvd, and
5 proceeding easterly along Pico Blvd to the point of beginning.

6 District #3

7 The region bounded and described as follows:

8 Beginning at the northmost point of City Boundary, and
9 proceeding southeasterly along City Boundary to Montana Ave, and
10 proceeding westerly along Montana Ave to 20th St, and proceeding
11 southerly along 20th St to Idaho Ave, and proceeding westerly
12 along Idaho Ave to 9th St, and proceeding northerly along 9th St
13 to Montana Ave, and proceeding westerly along Montana Ave to
14 Montana Ave Extension, and proceeding southerly along Montana
15 Ave Extension to City Boundary, and proceeding northerly along
16 City Boundary to the point of beginning.

17 District #4

18 The region bounded and described as follows:

19 Beginning at the City Boundary at the intersection of
20 Montana Ave and 26th St, and proceeding easterly along City
21 Boundary to Olympic Blvd, and proceeding westerly along Olympic
22 Blvd to Stewart St, and proceeding westerly along Stewart St to
23 Colorado Ave, and proceeding westerly along Colorado Ave to
24 Alley between Princeton and Harvard, and proceeding northerly
25

1 along Alley between Princeton and Harvard to Broadway, and
2 proceeding westerly along Broadway to Princeton St, and
3 proceeding northerly along Princeton St to Santa Monica Blvd,
4 and proceeding westerly along Santa Monica Blvd to Chelsea Ave,
5 and proceeding northerly along Chelsea Ave to Wilshire Blvd, and
6 proceeding westerly along Wilshire Blvd to 17th St, and
7 proceeding northerly along 17th St to Idaho Ave, and proceeding
8 easterly along Idaho Ave to 20th St, and proceeding northerly
9 along 20th St to Montana Ave, and proceeding easterly along
10 Montana Ave to Unlabeled, and proceeding northerly along
11 Unlabeled to Montana Ave, and proceeding easterly along Montana
12 Ave to the point of beginning.
13

14 District #5

15 The region bounded and described as follows:

16 Beginning at the point of intersection of Chelsea Ave and
17 Wilshire Blvd, and proceeding easterly along Chelsea Ave to
18 Santa Monica Blvd, and proceeding easterly along Santa Monica
19 Blvd to Princeton St, and proceeding southerly along Princeton
20 St to Broadway, and proceeding westerly along Broadway to Alley
21 between 19th and 20th St, and proceeding southerly along Alley
22 between 19th and 20th St to Colorado Ave, and proceeding
23 westerly along Colorado Ave to Alley between 17th and 18th St,
24 and proceeding northerly along Alley between 17th and 18th St to
25 Broadway, and proceeding westerly along Broadway to 16th St, and

1 proceeding northerly along 16th St to Santa Monica Blvd, and
2 proceeding southerly along Santa Monica Blvd to Alley between
3 9th and 10th St, and proceeding southerly along Alley between
4 9th and 10th St to Broadway, and proceeding westerly along
5 Broadway to 7th St, and proceeding northerly along 7th St to
6 Wilshire Blvd, and proceeding easterly along Wilshire Blvd to
7 Lincoln Blvd, and proceeding westerly along Lincoln Blvd to
8 Montana Ave, and proceeding easterly along Montana Ave to 9th
9 St, and proceeding southerly along 9th St to Idaho Ave, and
10 proceeding easterly along Idaho Ave to 17th St, and proceeding
11 easterly along 17th St to Wilshire Blvd, and proceeding easterly
12 along Wilshire Blvd to the point of beginning.

14 District #6

15 The region bounded and described as follows:

16 Beginning at the point of intersection of Lincoln Blvd and
17 Montana Ave, and proceeding southerly along Lincoln Blvd to
18 Wilshire Blvd, and proceeding westerly along Wilshire Blvd to
19 7th St, and proceeding southerly along 7th St to Broadway, and
20 proceeding easterly along Broadway to Lincoln Blvd, and
21 proceeding southerly along Lincoln Blvd to Bay St, and
22 proceeding westerly along Bay St to Ocean Front Walk, and
23 proceeding northerly along Ocean Front Walk to Pico Blvd
24 Extension, and proceeding westerly along Pico Blvd Extension to
25 City Boundary, and proceeding westerly along City Boundary to

1 Montana Ave Extension, and proceeding easterly along Montana Ave
2 Extension to Montana Ave, and proceeding northerly along Montana
3 Ave to Unlabeled, and proceeding easterly along Unlabeled to
4 Montana Ave, and proceeding easterly along Montana Ave to the
5 point of beginning.

6 District #7

7 The region bounded and described as follows:

8 Beginning at the point of intersection of 11th St and Pico
9 Blvd, and proceeding southerly along 11th St to Hill Pl N, and
10 proceeding westerly along Hill Pl N to Lincoln Blvd, and
11 proceeding easterly along Lincoln Blvd to Pier Ave, and
12 proceeding easterly along Pier Ave to Alley east of Lincoln
13 Blvd, and proceeding easterly along Alley east of Lincoln Blvd
14 to Marine Pl N, and proceeding easterly along Marine Pl N to
15 11th St, and proceeding southerly along 11th St to NE boundary
16 of Census Block 060377022021010, and proceeding easterly along
17 NE boundary of Census Block 060377022021010 to City Boundary,
18 and proceeding westerly along City Boundary to Unlabeled, and
19 proceeding westerly along Unlabeled to City Boundary, and
20 proceeding westerly along City Boundary to Pico Blvd Extension,
21 and proceeding easterly along Pico Blvd Extension to Ocean Front
22 Walk, and proceeding southerly along Ocean Front Walk to Bay St,
23 and proceeding easterly along Bay St to Lincoln Blvd, and
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1 proceeding northerly along Lincoln Blvd to Pico Blvd, and
2 proceeding easterly along Pico Blvd to the point of beginning;

3 8. Defendant shall hold a district-based special
4 election, consistent with the district map attached hereto on
5 July 2, 2019 for each of the seven seats on the Santa Monica
6 City Council, and the results of said special election shall be
7 tabulated and certified in compliance with applicable sections
8 of the Elections Code;


9
10 9. Any person, other than a person who has been duly
11 elected to the Santa Monica City Council through a district-
12 based election in conformity with this Judgment, is prohibited
13 from serving on the Santa Monica City Council after August 15,
14 2019;

15 10. The Court retains jurisdiction to interpret and
16 enforce this Judgment and to adjudicate any disputes regarding
17 implementation or interpretation of this Judgment;

18 11. Pursuant to Elections Code Section 14030 and Code of
19 Civil Procedure Section 1021.5, Plaintiffs are the prevailing
20 and successful parties and are entitled to recover reasonable
21 attorneys' fees and costs, including expert witness fees and
22 expenses, in an amount to be determined by noticed motion for an
23 award of attorneys' fees and a memorandum of costs for an award
24 of costs, including expert witness fees and expenses.
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//

1 DATED: February 13, 2019

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4 YVETTE M. PALAZUELOS
5 JUDGE OF THE SUPERIOR COURT
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ATTACHMENT

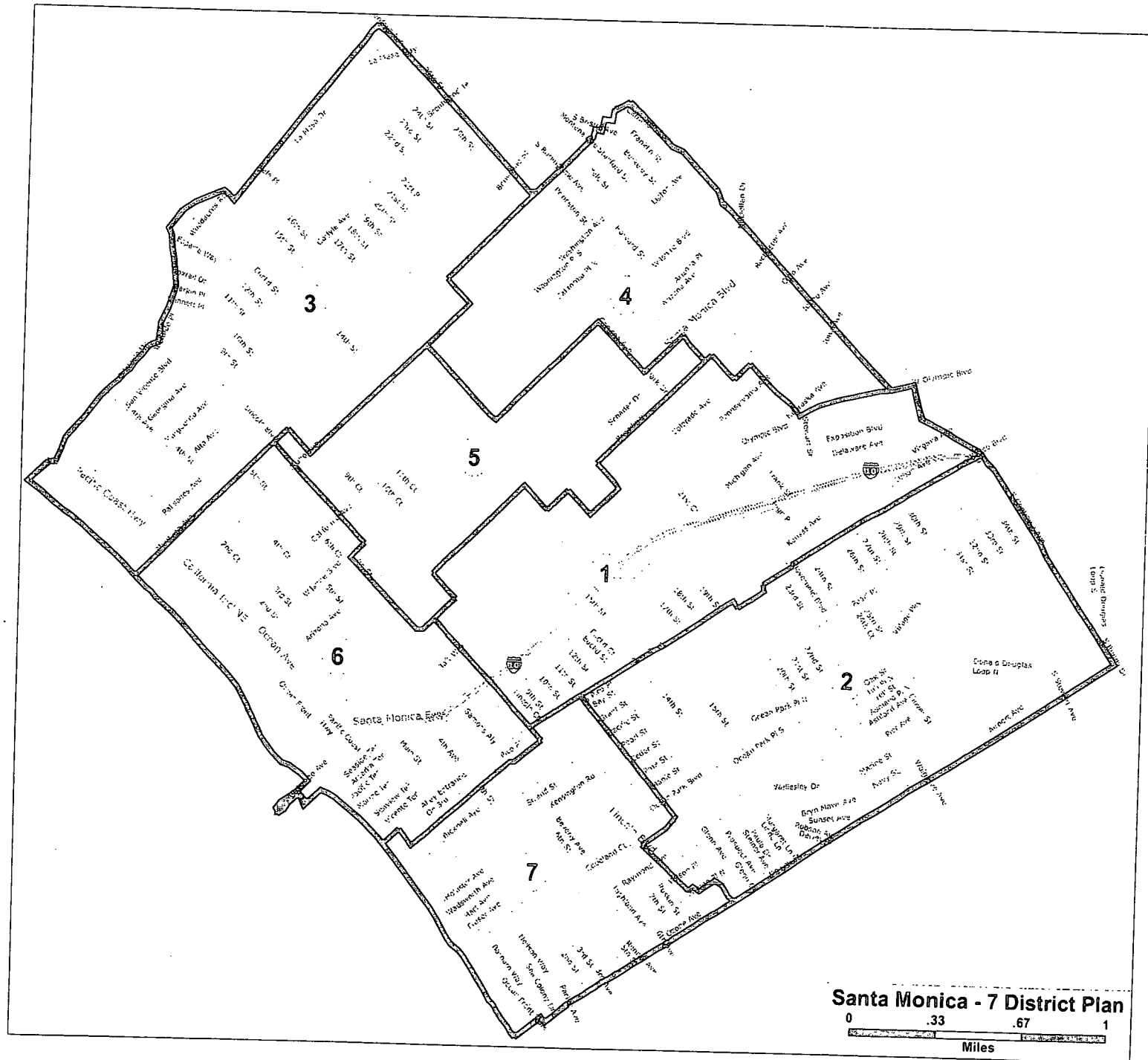


EXHIBIT B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

COURT OF APPEAL – SECOND DIST.

FILED

ELECTRONICALLY

Mar 27, 2019

DANIEL P. POTTER, Clerk

KRLEWIS

Deputy Clerk

PICO NEIGHBORHOOD ASSOC. et
al.,

Respondents,

v.

CITY OF SANTA MONICA,

Appellant.

B295935

(Super. Ct. No. BC616804)

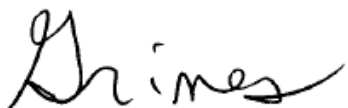
(Yvette M. Palazuelos, Judge)

STAY ORDER

We have read and considered the petition for writ of supersedeas filed on March 8, 2019. We have also read and considered the opposition and motion to strike, both filed on March 21, 2019, and the reply and opposition to motion to strike filed on March 25, 2019.

The motion to strike is denied.

The petition for writ of supersedeas is granted. Paragraph 9 of the judgment entered on February 13, 2019 operates as an automatic stay pending the disposition of this appeal.



GRIMES, Acting P.J.



STRATTON, J.



WILEY, J.

EXHIBIT C

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FILED
Superior Court of California
County of Los Angeles

NOV 08 2018

Sherri R. Carter, Executive Officer/Clerk
By Neli M. Raya Deputy
Neli M. Raya

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION,) Case No.: BC616804
et al.)
)
Plaintiffs,) TENTATIVE DECISION; ORDERS
)
vs.)
)
CITY OF SANTA MONICA,)
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Defendant.)
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Pursuant to CCP §632 and CRC Rule 3.1590(a), the court
issues a Tentative Decision as follows:

1. On the first and second causes of action, in favor of
Plaintiffs Pico Neighborhood Association and Maria Loya and
against Defendant City Of Santa Monica.

2. The Court also orders as follows:

1 a) A post-trial hearing regarding the
2 appropriate/preferred remedy for violation of the California
3 Voting Rights Act on December 7, 2018, 9:30 a.m., Dept. 28. All
4 counsel are ordered to appear.

5 b) Plaintiffs shall file and serve an Opening brief (no
6 more than 15 pages) as if a moving party per the Code of Civil
7 Procedure;

8 c) Responding brief (no more than 15 pages) and Reply
9 brief (no more than 7 pages) shall be filed and served per the
10 Code of Civil Procedure.

11 d) A courtesy copy of each brief must be delivered to the
12 courtroom.

13
14 CLERK TO GIVE WRITTEN NOTICE.

15 IT IS SO ORDERED.

16 DATED: November 5, 2018

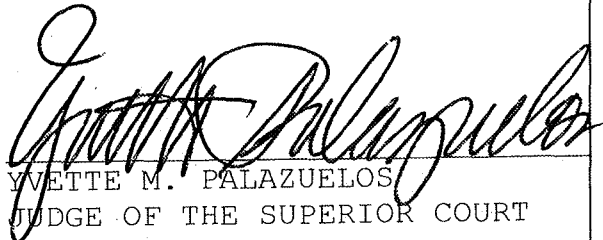
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YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

EXHIBIT D

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16 Attorneys for Defendant,
17 CITY OF SANTA MONICA

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF LOS ANGELES**

20 PICO NEIGHBORHOOD ASSOCIATION and
MARIA LOYA,

21 Plaintiffs,

22 v.

23 CITY OF SANTA MONICA,

24 Defendant.

CASE NO. BC616804

**CITY OF SANTA MONICA'S REQUEST
FOR STATEMENT OF DECISION (CODE
CIV. PROC. § 632; CAL. RULES OF
COURT, RULE 3.1590(d))**

Complaint Filed: April 12, 2016

Trial Date: August 1, 2018

Assigned to Judge Yvette Palazuelos

Dep't 28

Gov. Code, § 6103

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 15 2018

Sherri R. Carter, Executive Officer/Clerk of Court
By: Raul Sanchez, Deputy

1 Defendant City of Santa Monica ("City") submits the following request for a statement of
2 decision under Code of Civil Procedure section 632 and California Rule of Court 3.1590,
3 subdivision (d).

4 **Request for Statement of Decision**

5 Trial in this case began on August 1, 2018. The presentation of evidence was completed on
6 September 11, 2018, and post-trial briefing was completed on October 25, 2018. On November 8,
7 2018, the Court issued a tentative decision, a copy of which is attached as Exhibit A. With respect to
8 the merits, the Court's tentative decision states in full as follows: "On the first and second causes of
9 action, in favor of Plaintiffs Pico Neighborhood Association and Maria Loya and against Defendant
10 City of Santa Monica." The City hereby requests that the Court issue "a statement of decision
11 explaining the factual and legal bas[es] for its decision as to each of the principal controverted issues
12 at trial." (Code Civ. Proc., § 632). The principal controverted issues at trial were the following:

- 13 1. What are the elements of a claim under the California Voting Rights Act (CVRA)?
- 14 2. What must a CVRA plaintiff prove in order to show racially polarized voting? Must
15 such a plaintiff satisfy the second and third preconditions from *Thornburg v. Gingles*
16 (1986) 478 U.S. 30, 51, namely: (2) "the minority group must be able to show that it is
17 politically cohesive," and (3) "the minority must be able to demonstrate that the white
18 majority votes sufficiently as a bloc to enable it—in the absence of special
19 circumstances, such as the minority candidate running unopposed [citation]—usually to
20 defeat the minority's preferred candidate"?
- 21 3. Which City Council elections did the Court consider? What is the Court's rationale for
22 considering those elections and not others?
- 23 4. Did the Court give some City Council elections more weight than others? If so, which
24 elections, and why?
- 25 5. How did the Court determine which candidates were preferred by the voters of the
26 relevant minority group (here, Latinos)?

- 1 a. Must a candidate be Latino in order to be preferred by Latino voters, or is it the
2 status of the candidate as the chosen representative of Latino voters, rather than
3 the race of the candidate, that is relevant?
- 4 b. If the race of the candidate does matter, which candidates did the Court find to
5 be Latino for purposes of the CVRA? On what basis did the Court draw its
6 conclusions concerning candidates' race and ethnicity? Did it take into account
7 voter perceptions of candidates' race and ethnicity?
- 8 c. Can Latino voters, who may cast up to three or four votes in a single election,
9 prefer more than one candidate? If not, why not?
- 10 d. In each relevant election, how does the Court differentiate between candidates
11 preferred by Latino voters and those not preferred by Latino voters?
- 12 i. Is the first step in identifying whether a candidate is Latino-preferred to
13 determine which candidates would have won had Latinos been the only
14 voters? If not, why not?
- 15 ii. If the Court differentiates Latino-preferred candidates from non-Latino-
16 preferred candidates by determining that some candidates received
17 "significantly higher" Latino voter support than others, how does it
18 define "significantly higher"? For example, did Josefina Aranda receive
19 "significantly higher" support from Latino voters in 2002 than Kevin
20 McKeown?
- 21 iii. Can a candidate be Latino-preferred if fewer than 50 percent of Latino
22 voters vote for that candidate? If so, is there any numerical cutoff for
23 voter preference or non-numerical method of differentiating preferred
24 from non-preferred candidates?
- 25 iv. In considering the differences in Latino and non-Latino voter support for
26 candidates, did the Court consider that small differences between
27 ecological-regression and ecological-inference estimates may not be
28 meaningful in this case, because Santa Monica's Latino population is

now and always has been too small and too dispersed for statistical techniques to produce point estimates as accurate as those in the typical federal voting-rights case, where members of the minority group necessarily would account for a majority of eligible voters in a potential district?

v. In considering the differences in Latino and non-Latino voter support for candidates, did the Court also consider that estimates produced by ecological regression and ecological inference in this case may be systematically less accurate or inaccurate?

6. Who were the Latino-preferred candidates in each City Council election considered by the Court? In particular, who were the Latino-preferred candidates in each of the seven City Council elections analyzed by plaintiffs' expert, Dr. J. Morgan Kousser?

	First Latino-preferred Candidate	Second Latino-preferred candidate	Third Latino-preferred candidate	Fourth Latino-preferred candidate
1994				
1996				
2002				
2004				
2008				
2012				
2016				

7. Must white bloc voting cause a Latino-preferred candidate to lose in order for that candidate's defeat to be part of a pattern of racially polarized voting? If not, why not? If so, in each of the City Council elections considered by the Court, how many Latino-preferred candidates lost, and how many did so because of white bloc voting? In particular, in each of the seven City Council elections analyzed by plaintiffs' expert, Dr. J. Morgan Kousser, how many Latino-preferred candidates lost, and how many did so because of white bloc voting?

	# of Latino-preferred candidate(s)	# of Latino-preferred candidates who lost	# of Latino-preferred candidates who lost because of white bloc voting
1994			
1996			
2002			
2004			
2008			
2012			
2016			
Total			

8. Did the Court consider the results of exogenous elections (e.g., School Board) or voting on ballot initiatives? If not, why not? If so:
 - a. Who were the Latino-preferred candidates in each exogenous election considered by the Court?
 - b. In each exogenous election considered by the Court, how many Latino-preferred candidates lost, and how many did so because of white bloc voting?
 - c. How much weight did the Court give exogenous elections in its analysis, relative to the weight given to City Council elections?
 - d. For each ballot initiative considered by the Court, what was the Latino-preferred outcome?
 - e. For each ballot initiative considered by the Court, did sufficient numbers of white voters join with Latino voters to enable the ballot initiative to garner a majority of votes within the City in favor of the Latino-preferred outcome?
9. Did plaintiffs prove that Latino voters in Santa Monica cohesively prefer certain candidates?
10. Did plaintiffs prove that the white majority in Santa Monica votes sufficiently as a bloc to—in the absence of special circumstances—usually defeat candidates cohesively preferred by Latino voters? If so, how?

- 1 a. How did the Court define the word “usually,” as it is used in *Thornburg v.*
2 *Gingles*?
- 3 b. What fraction reflects the Court’s conclusion on this issue? In other words,
4 which losing Latino-preferred candidates defeated by white bloc voting are in
5 the numerator, and which Latino-preferred candidates are in the denominator?
- 6 c. Did the Court conclude that Oscar de la Torre’s deliberate attempt to lose the
7 2016 City Council election after his wife filed this lawsuit amounted to a
8 “special circumstance”?
- 9 11. Must a CVRA plaintiff prove vote dilution by showing that voters in the relevant
10 minority group would have a greater opportunity to elect candidates of their choice
11 under an alternative electoral system?
- 12 a. If so, against what objective and workable benchmark did the Court measure
13 actual Latino voting strength?
- 14 b. Did plaintiffs prove vote dilution through Mr. Ely’s estimate of vote totals in the
15 hypothetical Pico District?
- 16 c. Did plaintiffs prove vote dilution through Mr. Levitt’s opinions concerning
17 alternative at-large electoral schemes? If so, did the Court consider historical
18 levels of Latino voter cohesion or turnout? Or did the Court estimate actual
19 Latino voter turnout in order to determine whether Latino voters’ share of actual
20 voters would exceed the threshold of exclusion under a destaggered alternative
21 at-large electoral scheme?
- 22 12. Under what circumstances are the factors enumerated in Elections Code section
23 14028(e) relevant?
- 24 a. Were those factors part of the Court’s analysis of liability under the CVRA?
- 25 b. If so, what were the specific factors considered by the Court, and what factual
26 findings did the Court make relating to those factors?
- 27 c. What causal connection, if any, did the Court find between (i) any factors
28 considered by the Court and (ii) vote dilution?

- 1 13. Did plaintiffs prove that Santa Monica's method of election has caused a disparate
2 impact on minority voters?
- 3 a. Were plaintiffs required to prove, for purposes of their Equal Protection claim,
4 that minority voters would have a greater electoral opportunity under some other
5 electoral system?
- 6 b. When did the minority populations in Santa Monica become large and
7 concentrated enough that an alternative electoral system could have enhanced
8 minority voting strength? Which system(s), specifically, would have done so?
- 9 c. Did the 1946 Charter amendment—which put in place the system under which
10 seven City Council members are elected at-large in staggered elections, and
11 which eliminated designated posts—strengthen or weaken minority voting
12 power?
- 13 14. Did plaintiffs prove that the relevant decisionmakers affirmatively intended to
14 discriminate against minority voters by adopting and maintaining the current at-large
15 electoral system? If so, what were the relevant decisions, who were the relevant
16 decisionmakers, and what evidence did plaintiffs present showing that those
17 decisionmakers intended to discriminate?
- 18 a. Did the Court find intentional discrimination relative to Santa Monica's election
19 system at any point before 1946? If so, on which events, statements, or other
20 facts did the Court rely?
- 21 b. Did the Court find intentional discrimination relative to Santa Monica's 1946
22 Charter amendment? If so, on which events, statements, or other facts did the
23 Court rely?
- 24 c. Did the Court find intentional discrimination relative to Santa Monica voters'
25 rejection of Proposition 3 in 1975? If so, on which events, statements, or other
26 facts did the Court rely?
- 27 d. Did the Court find intentional discrimination relative to Santa Monica's
28 rejection of district elections in 1992? If so, on which events, statements, or

1 other facts did the Court rely?

2 i. If the Court found an affirmative intent to discriminate in 1992, is it
3 premising that finding on what was said or decided at the 1992 Council
4 meeting concerning the City's electoral system? If so, what specific
5 statements or decisions support the Court's conclusion?

6 ii. Has the Court found that any councilmembers intended to weaken
7 minority voting strength in order to preserve their seats, as was found in
8 *Garza v. County of Los Angeles*? If so, which councilmember(s)?

9 e. Did the Court find intentional discrimination relative to Santa Monica voters'
10 rejection of Measure HH in 2002? If so, on which events, statements, or other
11 facts did the Court rely?

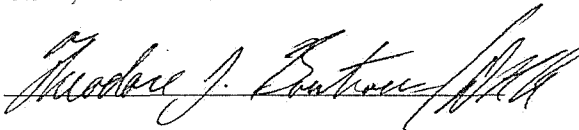
12 f. Did the Court find intentional discrimination relative to Santa Monica's election
13 system at any point after 2002? If so, on which events, statements, or other facts
14 did the Court rely?

15 15. Did the Court make findings under the five-factor framework set out in the United States
16 Supreme Court's decision in *Village of Arlington Heights v. Metropolitan Housing*
17 *Development Corporation* (1977) 429 U.S. 252? If so, what specific findings did the
18 Court make and what evidence supports those findings?

19 16. In assessing whether the City's at-large electoral system was adopted or maintained with
20 a discriminatory purpose, and whether the system has had a disparate impact on minority
21 voters, did the Court consider the legitimate, non-discriminatory purposes of the City's
22 at-large electoral system, including but not limited to (i) ensuring that all
23 councilmembers focus on all issues citywide, rather than only those issues facing their
24 particular districts; (ii) giving every voter a say concerning all seven Council seats, not
25 just one; and (iii) affording voters the opportunity to vote for Council seats every two
26 years, not every four years.

1 DATED: November 15, 2018

Respectfully submitted,
GIBSON, DUNN & CRUTCHER LLP

2
3 By: 

4 Theodore J. Boutrous, Jr.

5 Attorneys for Defendant
6 *City of Santa Monica*

EXHIBIT A

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FILED
Superior Court of California
County of Los Angeles

NOV 08 2018

Sherri R. Carter, Executive Officer/Clerk
By Neli M. Raya Deputy
Neli M. Raya

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION,) Case No.: BC616804
et al.)
Plaintiffs,) TENTATIVE DECISION; ORDERS
vs.)
CITY OF SANTA MONICA,)
Defendant.)

Pursuant to CCP §632 and CRC Rule 3.1590(a), the court
issues a Tentative Decision as follows:

1. On the first and second causes of action, in favor of
Plaintiffs Pico Neighborhood Association and Maria Loya and
against Defendant City Of Santa Monica.

2. The Court also orders as follows:

1 a) A post-trial hearing regarding the
2 appropriate/preferred remedy for violation of the California
3 Voting Rights Act on December 7, 2018, 9:30 a.m., Dept. 28. All
4 counsel are ordered to appear.

5 b) Plaintiffs shall file and serve an Opening brief (no
6 more than 15 pages) as if a moving party per the Code of Civil
7 Procedure;

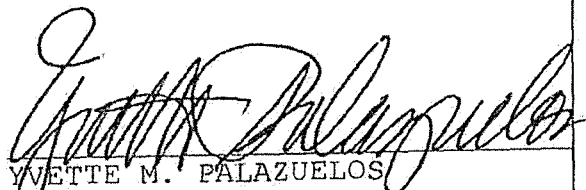
8 c) Responding brief (no more than 15 pages) and Reply
9 brief (no more than 7 pages) shall be filed and served per the
10 Code of Civil Procedure.

11 d) A courtesy copy of each brief must be delivered to the
12 courtroom.
13

14 CLERK TO GIVE WRITTEN NOTICE.

15 IT IS SO ORDERED.

16 DATED: November 5, 2018

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18 
19 YVETTE M. PALAZUELOS
20 JUDGE OF THE SUPERIOR COURT
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PROOF OF SERVICE

I, Cynthia Britt, declare:

I am employed in the County of Los Angeles, State of California. My business address is 333 South Grand Avenue, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On November 15, 2018, I served the

CITY OF SANTA MONICA'S REQUEST FOR STATEMENT OF DECISION

on the interested parties in this action by causing the service delivery of the above document as follows:

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☒ **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☒ **BY ELECTRONIC SERVICE:** I also caused the documents to be emailed to the persons at the electronic service addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 15, 2018, in Los Angeles, California.


Cynthia Britt

EXHIBIT E

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 28

BC616804

November 28, 2018

**PICO NEIGHBORHOOD ASSOCIATION ET AL VS CITY
OF SANTA MONICA**

2:23 PM

Judge: Honorable Yvette M. Palazuelos

CSR: None

Judicial Assistant: Neli Raya

ERM: None

Courtroom Assistant: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order

The court issued a Tentative Decision on November 8, 2018 and served it by mail.

Defendants filed a timely Request for a Statement of Decision pursuant to CCP §632 and Cal. Rules of Court, rule 3.1590(d). Defendant's Request for a Statement of Decision asks the court to respond to scores of alleged material issues. The court notes that in the preparation of a statement of decision, a trial court need not "respond point by point to issues posed in a request for statement of decision" but to material issues and facts or ambiguities or omissions. *Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1380.

Plaintiff's counsel shall file and serve a [Proposed] Statement of Decision on or before January 2, 2019. Concurrent with the filing of the [Proposed] Statement of Decision, Plaintiff's counsel shall also lodge with the court a CD disk or thumb drive containing a Microsoft Word compatible version of the [Proposed] Statement of Decision.

The Court's order, filed and signed this date, is adopted as the order of the Court and incorporated herein by reference to the case docket.

The Clerk shall give notice.

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012		FILED Superior Court of California County of Los Angeles 11/28/2018 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>Neti Raya</u> Deputy
PLAINTIFF/PETITIONER: Pico Neighborhood Association et al		
DEFENDANT/RESPONDENT: Santa Monica, City of, California et al		
CERTIFICATE OF MAILING		CASE NUMBER: BC616804

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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EXHIBIT F

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION and
MARIA LOYA,

Plaintiffs,

v.

CITY OF SANTA MONICA, and DOES 1
through 100, inclusive,

Defendants.

CASE NO. BC616804

[PROPOSED] JUDGMENT

Dept.: 28

[Assigned to the Honorable Yvette Palazuelos]

1 This cause came on for trial pursuant to notice and order of the Court on August 1, 2018, in
2 Department 28 of the Los Angeles Superior Court, Hon. Yvette M. Palazuelos, judge presiding. The
3 trial concluded on September 13, 2013. Plaintiffs, Maria Loya and Pico Neighborhood Association,
4 appeared through their attorneys of record: Kevin I. Shenkman and Andrea Alarcon of Shenkman &
5 Hughes PC; R. Rex Parris and Ellery Gordon of the Parris Law Firm; Milton Grimes and Robert
6 Rubin. Defendant, City of Santa Monica, California, appeared through its attorneys of record:
7 Marcellus McRae, Kahn Scolnick, Tiaunia Henry, Daniel Adler and Michelle Maryott of Gibson Dunn
8 & Crutcher LLP and George Cardona of the Santa Monica City Attorney's Office.

9 At the conclusion of the trial on September 13, 2018, the parties submitted briefing in lieu of
10 closing statements. On November 8, 2018, this Court issued its Tentative Decision, finding in favor of
11 Plaintiffs on both of their causes of action: 1) violation of the California Voting Rights Act of 2001
12 ("CVRA"); and 2) violation of the Equal Protection Clause of the California Constitution. Defendant
13 requested a Statement of Decision on November 15, 2018. On November 8, 2018, this Court also
14 ordered the parties to address proposed remedies through briefing and at a hearing on December 7,
15 2018. At that hearing, in addition to the counsel who appeared at the August 1 – September 13, 2018
16 trial, Theodore Boutrous of Gibson Dunn & Crutcher LLP appeared on behalf of Defendant. On
17 December 12, 2018, this Court issued a First Amended Tentative Decision, prohibiting Defendant
18 from employing any further at-large elections for any seats on its city council and ordered that all
19 future elections for any seats on Defendant's city council shall be district-based elections (as defined
20 by the CVRA) in accordance with the map attached thereto. On December 12, 2018 this Court also
21 directed Plaintiffs to prepare a proposed judgment for this Court. On January 2, 2019, this Court
22 provided further clarification of its First Amended Tentative Decision, specifically regarding the
23 selection of appropriate remedies.

24 After hearing and considering all of the testimony, evidence and arguments presented, and
25 having issued its Statement of Decision, the Court now enters its Judgment in the above-captioned
26 case.

27 ///

28 ///

1 The Court finds as follows:

2 1. Plaintiff Maria Loya is registered to vote, and resides within the City of Santa Monica,
3 California. She is a member of a “protected class” as that term is defined in California Elections Code
4 Section 14026. Plaintiff Pico Neighborhood Association is an organization with members who, like
5 Maria Loya, reside in Santa Monica, are registered to vote, and are members of a protected class.
6 Plaintiff Pico Neighborhood Association’s organizational mission is germane to the subject of this
7 case – namely, advocating for the interests of Pico Neighborhood residents, including to the city
8 government, where Latinos are concentrated in Santa Monica.

9 2. Defendant is a political subdivision as that term is defined in California Elections Code
10 Section 14026. The governing body of Defendant is the City Council of Santa Monica, California.
11 The City Council of Santa Monica, California is elected by an “at large method of election” as that
12 term is defined in California Elections Code Section 14026.

13 3. Plaintiffs have demonstrated that elections in Santa Monica, namely elections for
14 Defendant’s city council involving at least one Latino candidate, are consistently and significantly
15 characterized by “racially-polarized voting” as that term is defined in California Elections Code
16 Section 14026.

- 17 • Analyzing elections over the past twenty-four years, a consistent pattern of racially-
18 polarized voting emerges. In most elections where the choice is available, Latino
19 voters strongly prefer a Latino candidate running for Defendant’s city council, but,
20 despite that support, the preferred Latino candidate loses. As a result, though Latino
21 candidates are generally preferred by the Latino electorate in Santa Monica, only one
22 Latino has been elected to the Santa Monica City Council in the 72 years of the current
23 election system – 1 out of 71 to serve on the city council.
- 24 • Though not necessary to show a CVRA violation, Plaintiffs have also demonstrated
25 other factors supporting the finding of a violation of the CVRA, pursuant to Elections
26 Code section 14028(e), including a history of discrimination in Santa Monica; the use
27 of electoral devices or other voting practices or procedures that may enhance the
28 dilutive effects of at-large elections; that Latinos in Santa Monica bear the effects of

1 past discrimination in areas such as education, employment, and health, which hinder
2 their ability to participate effectively in the political process; the use of overt or subtle
3 racial appeals in political campaigns; and a lack of responsiveness by the Santa Monica
4 city government to the Latino community concentrated in the Pico Neighborhood.

5 4. In the face of racially polarized voting patterns of the Santa Monica electorate, Defendant
6 has imposed an at-large method of election in a manner that impairs the ability of Latinos to elect
7 candidates of their choice or influence the outcome of elections, as a result of the dilution or the
8 abridgment of the rights of Latino voters.

9 5. The City of Santa Monica amended its charter in 1946, adopting its current council-
10 manager form government and current at-large election system. The precise terms of that charter
11 amendment, and specifically the form of elections to be employed, were decided upon by a Board of
12 Freeholders. In 1992, Defendant's city council rejected the recommendation of the Charter Review
13 Committee to scrap the at-large election system. In each instance, the adoption and/or maintenance of
14 at-large elections was done with a discriminatory purpose, and has had a discriminatory impact.

15 6. The CVRA does not require the imposition of district-based elections. The Court
16 considered cumulative voting, limited voting and ranked choice voting as potential remedies to
17 Defendant's violation of the CVRA. Plaintiffs presented these at-large alternatives for the Court's
18 consideration, but both Plaintiffs and Defendant agreed that the most appropriate remedy would
19 indeed be a district-based remedy. While the Court finds that each of these alternatives would
20 improve Latino voting power in Santa Monica, the Court finds that the imposition of district-based
21 elections is an appropriate remedy to address the effects of the established history of racially-polarized
22 voting.

23 7. During the trial, Plaintiffs' expert presented a district plan. That district plan included a
24 district principally composed of the Pico Neighborhood, where Santa Monica's Latino community is
25 concentrated. Districts drawn to remedy a violation of the CVRA should be nearly equal in
26 population, and should not be drawn in a manner that may violate the federal Voting Rights Act.
27 Other factors may also be considered -- the topography, geography and communities of interest of the
28 city should be respected, and the districts should be cohesive, contiguous and compact. *See Elections*

1 Code Section 21620. Districts drawn to remedy a violation of the CVRA should not be drawn to
2 protect current incumbents. Incumbency protection is generally disfavored in California. (*See*
3 California Constitution Art. XXI Section 2(e)). The place of residence of incumbents or political
4 candidates is not one of the considerations listed in Section 21620 of the Elections Code. Race should
5 not be a predominant consideration in drawing districts unless necessary to remedy past violation of
6 voting rights. The district plan presented by Plaintiffs' expert properly takes into consideration the
7 factors of topography, geography, cohesiveness, contiguity and compactness of territory, and
8 community of interest of the districts, and race was not a predominant consideration.

9 8. The current members of the Santa Monica City Council were elected through unlawful
10 elections. The residents of the City of Santa Monica deserve to have a lawfully elected city council as
11 soon as is practical. The residents of the City of Santa Monica are entitled to have a council that truly
12 represents all members of the community. Latino residents of Santa Monica, like all other residents of
13 Santa Monica, deserve to have their voices heard in the operation of their city. This can only be
14 accomplished if all members of the city council are lawfully elected. To permit some members of the
15 council to remain who obtained their office through an unlawful election may be a necessary and
16 appropriate interim remedy but will not cure the clear violation of the CVRA and Equal Protection
17 Clause.

18
19 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that
20 Defendant has violated the California Voting Rights Act (California Elections Code Sections 14025 –
21 14032).

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant's plurality at-
23 large elections for its City Council violate Elections Code Sections 14027 and 14028.

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant has violated
25 the Equal Protection Clause of the California Constitution (California Constitution, Article I Section
26 7).

27 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant's plurality at-
28 large elections for its City Council violate the Equal Protection Clause of the California Constitution.

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant is
2 permanently enjoined from imposing, applying, holding, tabulating, and/or certifying any further at-
3 large elections, and/or the results thereof, for any positions on its City Council.

4 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant is
5 permanently enjoined from imposing, applying, holding, tabulating, and/or certifying any elections,
6 and/or the results thereof, for any positions on its City Council, except an election in conformity with
7 this judgment.

8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all further elections,
9 from the date of entry of this judgment for any seats on the Santa Monica City Council, shall be
10 district-based elections, as defined by the California Voting Rights Act, in accordance with the map
11 attached hereto as Exhibit A. The metes and bounds of each district, as depicted in the map attached
12 as Exhibit A, are described using TIGER line segments (used to define census block geography) as
13 follows:

14
15 District #1

16 The region bounded and described as follows:
17 Beginning at the point of intersection of Alley between Princeton and Harvard and Broadway, and
18 proceeding southerly along Alley between Princeton and Harvard to Colorado Ave, and proceeding
19 northerly along Colorado Ave to Stewart St, and proceeding southerly along Stewart St to Olympic
20 Blvd, and proceeding easterly along Olympic Blvd to City Boundary, and proceeding easterly along
21 City Boundary to Pico Blvd, and proceeding westerly along Pico Blvd to 22nd St, and proceeding
22 southerly along 22nd St to Alley south of Pico Blvd, and proceeding westerly along Alley south of
23 Pico Blvd to 20th St, and proceeding northerly along 20th St to Pico Blvd, and proceeding westerly
24 along Pico Blvd to Lincoln Blvd, and proceeding northerly along Lincoln Blvd to Broadway, and
25 proceeding easterly along Broadway to Alley between 9th and 10th St, and proceeding northerly along
26 Alley between 9th and 10th St to Santa Monica Blvd, and proceeding easterly along Santa Monica
27 Blvd to 16th St, and proceeding southerly along 16th St to Broadway, and proceeding easterly along
28 Broadway to Alley between 17th and 18th St, and proceeding southerly along Alley between 17th and

1 18th St to Colorado Ave, and proceeding northerly along Colorado Ave to Alley between 19th and
2 20th St, and proceeding northerly along Alley between 19th and 20th St to Broadway, and proceeding
3 northerly along Broadway to the point of beginning.

4
5 District #2

6 The region bounded and described as follows:

7 Beginning at the point of intersection of City Boundary and Pico Blvd, and proceeding southerly along
8 City Boundary to NE boundary of Census Block 060377022021010, and proceeding westerly along
9 NE boundary of Census Block 060377022021010 to 11th St, and proceeding northerly along 11th St
10 to Marine Pl N, and proceeding westerly along Marine Pl N to Alley east of Lincoln Blvd, and
11 proceeding westerly along Alley east of Lincoln Blvd to Pier Ave, and proceeding westerly along Pier
12 Ave to Lincoln Blvd, and proceeding westerly along Lincoln Blvd to Hill Pl N, and proceeding
13 easterly along Hill Pl N to 11th St, and proceeding northerly along 11th St to Pico Blvd, and
14 proceeding easterly along Pico Blvd to 20th St, and proceeding southerly along 20th St to Alley south
15 of Pico Blvd, and proceeding easterly along Alley south of Pico Blvd to 22nd St, and proceeding
16 northerly along 22nd St to Pico Blvd, and proceeding easterly along Pico Blvd to the point of
17 beginning.

18
19 District #3

20 The region bounded and described as follows:

21 Beginning at the northmost point of City Boundary, and proceeding southeasterly along City
22 Boundary to Montana Ave, and proceeding westerly along Montana Ave to 20th St, and proceeding
23 southerly along 20th St to Idaho Ave, and proceeding westerly along Idaho Ave to 9th St, and
24 proceeding northerly along 9th St to Montana Ave, and proceeding westerly along Montana Ave to
25 Montana Ave Extension, and proceeding southerly along Montana Ave Extension to City Boundary,
26 and proceeding northerly along City Boundary to the point of beginning.

27 ///

28 ///

District #4

The region bounded and described as follows:

Beginning at the City Boundary at the intersection of Montana Ave and 26th St, and proceeding easterly along City Boundary to Olympic Blvd, and proceeding westerly along Olympic Blvd to Stewart St, and proceeding westerly along Stewart St to Colorado Ave, and proceeding westerly along Colorado Ave to Alley between Princeton and Harvard, and proceeding northerly along Alley between Princeton and Harvard to Broadway, and proceeding westerly along Broadway to Princeton St, and proceeding northerly along Princeton St to Santa Monica Blvd, and proceeding westerly along Santa Monica Blvd to Chelsea Ave, and proceeding northerly along Chelsea Ave to Wilshire Blvd, and proceeding westerly along Wilshire Blvd to 17th St, and proceeding northerly along 17th St to Idaho Ave, and proceeding easterly along Idaho Ave to 20th St, and proceeding northerly along 20th St to Montana Ave, and proceeding easterly along Montana Ave to Unlabeled, and proceeding northerly along Unlabeled to Montana Ave, and proceeding easterly along Montana Ave to the point of beginning.

District #5

The region bounded and described as follows:

Beginning at the point of intersection of Chelsea Ave and Wilshire Blvd, and proceeding easterly along Chelsea Ave to Santa Monica Blvd, and proceeding easterly along Santa Monica Blvd to Princeton St, and proceeding southerly along Princeton St to Broadway, and proceeding westerly along Broadway to Alley between 19th and 20th St, and proceeding southerly along Alley between 19th and 20th St to Colorado Ave, and proceeding westerly along Colorado Ave to Alley between 17th and 18th St, and proceeding northerly along Alley between 17th and 18th St to Broadway, and proceeding westerly along Broadway to 16th St, and proceeding northerly along 16th St to Santa Monica Blvd, and proceeding southerly along Santa Monica Blvd to Alley between 9th and 10th St, and proceeding southerly along Alley between 9th and 10th St to Broadway, and proceeding westerly along Broadway to 7th St, and proceeding northerly along 7th St to Wilshire Blvd, and proceeding easterly along Wilshire Blvd to Lincoln Blvd, and proceeding westerly along Lincoln Blvd to Montana

Ave, and proceeding easterly along Montana Ave to 9th St, and proceeding southerly along 9th St to Idaho Ave, and proceeding easterly along Idaho Ave to 17th St, and proceeding easterly along 17th St to Wilshire Blvd, and proceeding easterly along Wilshire Blvd to the point of beginning.

District #6

The region bounded and described as follows:

Beginning at the point of intersection of Lincoln Blvd and Montana Ave, and proceeding southerly along Lincoln Blvd to Wilshire Blvd, and proceeding westerly along Wilshire Blvd to 7th St, and proceeding southerly along 7th St to Broadway, and proceeding easterly along Broadway to Lincoln Blvd, and proceeding southerly along Lincoln Blvd to Bay St, and proceeding westerly along Bay St to Ocean Front Walk, and proceeding northerly along Ocean Front Walk to Pico Blvd Extension, and proceeding westerly along Pico Blvd Extension to City Boundary, and proceeding westerly along City Boundary to Montana Ave Extension, and proceeding easterly along Montana Ave Extension to Montana Ave, and proceeding northerly along Montana Ave to Unlabeled, and proceeding easterly along Unlabeled to Montana Ave, and proceeding easterly along Montana Ave to the point of beginning.

District #7

The region bounded and described as follows:

Beginning at the point of intersection of 11th St and Pico Blvd, and proceeding southerly along 11th St to Hill Pl N, and proceeding westerly along Hill Pl N to Lincoln Blvd, and proceeding easterly along Lincoln Blvd to Pier Ave, and proceeding easterly along Pier Ave to Alley east of Lincoln Blvd, and proceeding easterly along Alley east of Lincoln Blvd to Marine Pl N, and proceeding easterly along Marine Pl N to 11th St, and proceeding southerly along 11th St to NE boundary of Census Block 060377022021010, and proceeding easterly along NE boundary of Census Block 060377022021010 to City Boundary, and proceeding westerly along City Boundary to Unlabeled, and proceeding westerly along Unlabeled to City Boundary, and proceeding westerly along City Boundary to Pico Blvd Extension, and proceeding easterly along Pico Blvd Extension to Ocean Front Walk, and proceeding

1 southerly along Ocean Front Walk to Bay St, and proceeding easterly along Bay St to Lincoln Blvd,
2 and proceeding northerly along Lincoln Blvd to Pico Blvd, and proceeding easterly along Pico Blvd to
3 the point of beginning.
4

5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant shall hold a
6 district-based special election, consistent with the district map attached as Exhibit A, on July 2, 2019
7 for each of the seven seats on the Santa Monica City Council, and the results of said special election
8 shall be tabulated and certified in compliance with applicable sections of the Elections Code.

9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that any person, other than a
10 person who has been duly elected to the Santa Monica City Council through a district-based election
11 in conformity with this judgment, is prohibited from serving on the Santa Monica City Council after
12 August 15, 2019.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court retains
14 jurisdiction to interpret and enforce this judgment and the Settlement Agreement and to adjudicate any
15 disputes regarding implementation or interpretation of this judgment.

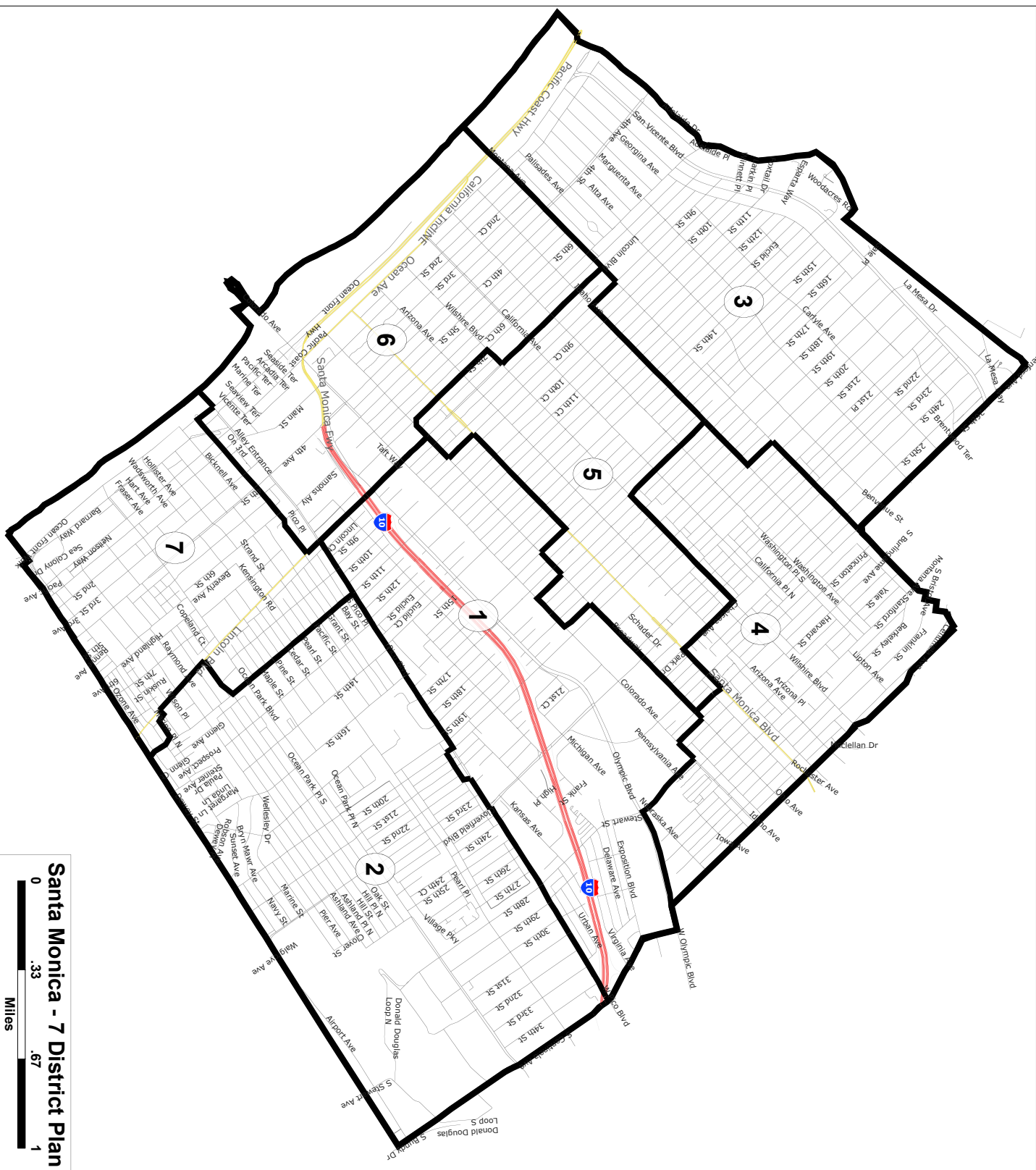
16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, pursuant to Elections
17 Code Section 14030 and Code of Civil Procedure Section 1021.5, Plaintiffs are the prevailing and
18 successful parties and are entitled to recover reasonable attorneys' fees and costs, including expert
19 witness fees and expenses, in an amount to be determined by noticed motion for an award of
20 attorneys' fees and a memorandum of costs for an award of costs, including expert witness fees and
21 expenses.

22 The Clerk is directed to enter this Judgment.

23 Dated: _____
24

25 _____
26 Hon. Yvette M. Palazuelos
27 Judge of the Los Angeles Superior Court
28

EXHIBIT “A”



PROOF OF SERVICE
1013A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 43364 10th Street West, Lancaster, California 93534.

On January 3, 2019, I served the foregoing document described as **[PROPOSED]**
JUDGEMENT as follows:

***** See Attached Service List *****

☒ **BY MAIL as follows:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Lancaster, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE as follows:**

☐ I delivered such envelope by hand to the addressees at 111 North Hill Street, Los Angeles, CA 90012. _____

☐ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is Team Legal, Inc., 40015 Sierra Highway, Suite B220, Palmdale, CA 93550.

☐ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is First Legal Support Services, 1511 West Beverly Blvd., Los Angeles, CA 90026.

☐ **BY FACSIMILE as follows:** I served such document(s) by fax at See Service List to the fax number provided by each of the parties in this litigation at Lancaster, California. I received a confirmation sheet indicating said fax was transmitted completely.

☐ **BY GOLDEN STATE OVERNIGHT DELIVERY/OVERNIGHT MAIL as follows:** I placed such envelope in a Golden State Overnight Delivery Mailer addressed to the above party or parties at the above address(es), with delivery fees fully pre-paid for next-business-day delivery, and delivered it to a Federal Express pick-up driver before 4:00 p.m. on the stated date.

1 [] **BY ELECTRONIC SERVICE as follows:** Based on a court order, or an
2 agreement of the parties to accept service by electronic transmission, I caused the
3 documents to be sent to the persons at the electronic notification addressed listed
4 on the attached Service List.

5 Executed on January 3, 2019, at Lancaster, California.

6 X (State) I declare under penalty of perjury under the laws of the State of California
7 that the above is true and correct.

8 
9 Marci Cussimonio

SERVICE LIST

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION and
MARIA LOYA,

Plaintiffs,

v.

CITY OF SANTA MONICA, and DOES 1
through 100, inclusive,

Defendants.

CASE NO. BC616804

**[PROPOSED] STATEMENT OF
DECISION**

Trial Date: August 1, 2018
Dept.: 28

[Assigned to the Honorable Yvette Palazuelos]

1 **I. SUMMARY**

2 The action was tried before the Court on August 1, 2018 through September 13, 2018.
3 Plaintiffs submitted their closing argument on September 25, 2018. Defendant submitted its closing
4 augment on October 15, 2018. On October 25, 2018 Plaintiffs submitted their rebuttal argument. The
5 Court issued its Tentative Decision on November 8, 2018. On November 15, 2018 Defendant
6 requested a statement of decision. The parties submitted further briefing regarding proposed remedies,
7 and on December 7, 2018 a hearing was held on the issue of remedies. On December 12, 2018 the
8 Court issued its Amended Tentative Decision.

9 Plaintiffs' First Amended Complaint alleges two causes of action: 1) Violation of the California
10 Voting Rights Act of 2001 ("CVRA"); and 2) Violation of the Equal Protection Clause of the
11 California Constitution ("Equal Protection Clause"). In response, Defendant denied that it has violated
12 either the CVRA or the Equal Protection Clause, and asserted various affirmative defenses.

13 The Court finds in favor of Plaintiffs on both causes of action. Accordingly, the Court orders
14 that Defendant may no longer elect its city council, or any members thereof, through the at-large
15 election structure responsible for the injuries; rather all future elections for any seat(s) on Defendant's
16 city council shall be district-based elections (as defined in the CVRA) as specified herein.

17 **II. THE CALIFORNIA VOTING RIGHTS ACT**

18 The CVRA disfavors the use of so-called "at-large" voting—an election method that permits
19 voters of an entire jurisdiction to elect candidates to the seats of its governing board and which permits
20 a plurality of voters to capture all of the available seats. (See generally *Sanchez v. City of Modesto*
21 (2006) 145 Cal.App.4th 660 (*Sanchez*).) The U.S. Supreme Court "has long recognized that multi-
22 member districts and at-large voting schemes may operate to minimize or cancel out the voting
23 strength" of minorities. (*Thornburg v. Gingles* (1986) 478 U.S. 30, 46 (*Gingles*) at p. 47; see also *id.*
24 at p. 48, n. 14 [at-large elections may also cause elected officials to "ignore [minority] interests without
25 fear of political consequences"], citing *Rogers v. Lodge* (1982) 458 U.S. 613, 623; *White v. Regester*
26 (1973) 412 U.S. 755, 769.) In at-large elections, "the majority, by virtue of its numerical superiority,
27 will regularly defeat the choices of minority voters." (*Gingles*, at p. 47).

28 Section 2 of the federal Voting Rights Act ("FVRA"), 52 U.S.C. § 10101, et seq., which

1 Congress enacted in 1965 and amended in 1982, targets, among other things, discriminatory at-large
2 election schemes. (*Gingles, supra*, 478 U.S. at p. 37; see also Boyd & Markman, *The 1982*
3 *Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347,
4 1402.) By enacting the CVRA, the California “Legislature intended to expand protections against vote
5 dilution over those provided by the federal Voting Rights Act of 1965.” (*Jauregui v. City of Palmdale*
6 (2014) 226 Cal.App.4th 781, 808 (*Jauregui*).)

7 The CVRA “was enacted to implement the equal protection and voting guarantees of article I,
8 section 7, subdivision (a) and article II, section 2” of the California Constitution. (*Jauregui* at 793,
9 citing § 14031)¹. “Section 14027 [of the CVRA] sets forth the circumstances where an at-large
10 electoral system may not be imposed ...: ‘An at-large method of election may not be imposed or
11 applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its
12 ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights
13 of voters who are members of a protected class, as defined pursuant to Section 14026.’” (*Id.*, citing
14 *Sanchez* at p. 669). Section 14028 of the CVRA provides more clarity on how a violation of the
15 CVRA is established: “A violation of Section 14027 is established if it is shown that racially polarized
16 voting occurs in elections for members of the governing body of the political subdivision or in
17 elections incorporating other electoral choices by the voters of the political subdivision.” “Section
18 14026, subdivision (e) defines racially polarized voting thusly: ‘Racially polarized voting means voting
19 in which there is a difference, as defined in case law regarding enforcement of the federal Voting
20 Rights Act ([52 U.S.C. Sec. 10301 et seq.]), in the choice of candidates or other electoral choices that
21 are preferred by voters in a protected class, and in the choice of candidates and electoral choices that
22 are preferred by voters in the rest of the electorate.” (*Jauregui* at 793). “Proof of racially polarized
23 voting patterns are established by examining voting results of elections where at least one candidate is
24 a member of a protected class; elections involving ballot measures; or other ‘electoral choices that
25 affect the rights and privileges’ of protected class members.” (*Id.*, citing § 14028 subd. (b)). Racially
26 polarized voting can be shown through quantitative statistical evidence, using the methods approved in
27

28 ¹ Statutory citations are to the California Elections Code, unless otherwise indicated.

1 federal Voting Rights Act cases. (*Jauregui* at 794, quoting § 14026, subd. (e). [“The methodologies for
2 estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting
3 Rights Act ([52 U.S.C. Sec. 10301 et seq.]) to establish racially polarized voting may be used for
4 purposes of this section to prove that elections are characterized by racially polarized voting.”]).
5 Additionally, “[t]here are a variety of [other] factors a court may consider in determining whether an
6 at-large electoral system impairs a protected class's ability to elect candidates or otherwise dilute their
7 voting power,” including “the extent to which candidates who are members of a protected class and
8 who are preferred by voters of the protected class, as determined by an analysis of voting behavior,
9 have been elected to the governing body of a political subdivision that is the subject of an action” (§
10 14028, subd. (b)) and the qualitative factors listed in Section 14028 subd. (e) which “are probative, but
11 not necessary factors to establish a violation of [the CVRA]”.² (*Jauregui* at 794).

12 Equally important to an understanding of the CVRA as what the CVRA directs the Court to
13 consider is acknowledging what need *not* be shown to establish a violation of the CVRA. While the
14 CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the
15 Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.”
16 (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9,
17 2002, at p. 2.) Unlike the FVRA, to establish a violation of the CVRA, plaintiffs need not show that a
18 “majority-minority” district can be drawn. (§ 14028, subd. (c); *Sanchez, supra*, 145 Cal.App.4th at p.
19 669). Likewise, the factors enumerated in section 14028 subd. (e), which are modeled on, but also
20 differ from, the FVRA’s “Senate factors,” are “not necessary [] to establish a violation” (§ 14028,
21 subd. (e)). “[P]roof of an intent to discriminate is [also] not an element of a violation of [the CVRA].”
22

23 ² Section 14028 subd. (e) provides: “Other factors such as the history of discrimination, the use of
24 electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-
25 large elections, denial of access to those processes determining which groups of candidates will receive
26 financial or other support in a given election, the extent to which members of a protected class bear the
27 effects of past discrimination in areas such as education, employment, and health, which hinder their
28 ability to participate effectively in the political process, and the use of overt or subtle racial appeals in
political campaigns are probative, but not necessary factors to establish a violation of Section 14027
and this section.”

1 (*Jauregui* at 794, citing § 14028, subd. (d)).

2 The appellate courts that have addressed the CVRA have noted that showing racially polarized
3 voting establishes the at-large election system dilutes minority votes and therefore violates the CVRA.
4 (*Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1229 [“To prove a CVRA
5 violation, the plaintiffs must show that the voting was racially polarized. However, they do not need to
6 either show that members of a protected class live in a geographically compact area or demonstrate a
7 discriminatory intent on the part of voters or officials.”]; *Jauregui* at p. 798 [“The trial court’s
8 unquestioned findings [concerning racially polarized voting] demonstrate that defendant’s at-large
9 system dilutes the votes of Latino and African American voters.”]; see also Assem. Com. on Judiciary,
10 Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 2 [The CVRA
11 “addresses the problem of racial block voting, which is particularly harmful to a state like California
12 due to its diversity.”]) The key element under the CVRA—“racially polarized voting”—consists of
13 two interrelated elements: (1) “the minority group . . . is politically cohesive[;]” and (2) “the white
14 majority votes sufficiently as a bloc to enable it—in the absence of special circumstances—usually to
15 defeat the minority’s preferred candidate.” (*Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d
16 1407, 1413, quoting *Gingles, supra*, 478 U.S. at pp. 50–51.) It is the combination of plurality-winner
17 at-large elections and racially polarized voting that yields the harm the CVRA is intended to combat.
18 (*Jauregui, supra*, 226 Cal.App.4th at p. 789 [describing how vote dilution is proven in FVRA cases
19 and how vote dilution is differently proven in CVRA cases].) To an even greater extent than the
20 FVRA, the CVRA expressly directs the courts, in analyzing “elections for members of the governing
21 body of the [defendant]” to focus on those “elections in which at least one candidate is a member of a
22 protected class.” (§ 14028, subds. (a), (b).)

23 Once liability is established under the CVRA, the Court has a broad range of remedies from
24 which to choose in order to provide greater electoral opportunity, including both district and non-
25 district solutions. (See § 14029; *Sanchez, supra*, 145 Cal.App.4th at p. 670; *Jauregui, supra*, 226
26 Cal.App.4th at p. 808 [“The Legislature intended to expand protections against vote dilution over those
27 provided by the federal Voting Rights Act. It is incongruous to intend this expansion of vote dilution
28 liability but then constrict the available remedies in the electoral context to less than those in the Voting

1 Rights Act. The Legislature did not intend such an odd result.”].) In light of the broad range of
2 remedies available to the Court, a plaintiff need not demonstrate the desirability of any particular
3 remedy to establish a violation of the CVRA. (See § 14028, subd. (a); Assem. Com. on Judiciary,
4 Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 [“Thus, this bill
5 puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart
6 (what type of remedy is appropriate once racially polarized voting has been shown.”].)

7 **III. DEFENDANT’S AT-LARGE ELECTION SYSTEM VIOLATES THE CVRA**

8 **A. Defendant Employs An “At Large” Method of Electing Its City Council, and** 9 **Plaintiffs Have Standing to Challenge That At-Large Method Pursuant to the** 10 **CVRA.**

11 The CVRA defines “[a]t-large method of election” as including any method “in which the voters
12 of the entire jurisdiction elect the members to the governing body.” (§ 14026 subd. (a)). All of the
13 voters residing in Santa Monica elect every member of its city council, and the candidates with a
14 plurality of the votes win the available seats. Though the parties did not stipulate to this element,
15 Defendant has never disputed that it employs an at-large method of electing its city council.

16 Likewise, though the parties did not stipulate to Plaintiffs’ standing to challenge Defendant’s at-
17 large method of election under the CVRA, the requisite facts establishing their standing were presented
18 at trial without any rebuttal by Defendant. The CVRA explicitly grants standing to “any voter who is a
19 member of a protected class and who resides in a political subdivision where a violation of [the CVRA]
20 is alleged.” (§ 14032). Plaintiff Maria Loya resides in Santa Monica, is registered to vote, and is Latina
21 – the “protected class” principally at issue in this case. Plaintiff Pico Neighborhood Association is an
22 organization with members who, like Maria Loya, reside in Santa Monica, are registered to vote, and
23 are Latino/a. Some of those members testified at trial – e.g. Oscar de la Torre and Berenice Onofre.
24 Plaintiff Pico Neighborhood Association’s organizational mission is germane to the subject of this case
25 – namely, advocating for the interests of residents of the Pico Neighborhood (where Latinos are
26 concentrated in Santa Monica), including to the city government. “[E]ven in the absence of injury to
27 itself, an association may have standing solely as the representative of its members.” (*Property*
28 *Owners of Whispering Palms, Inc. v. Newport Pacific, Inc.* (2005) 132 Cal. App. 4th 666, 672). “An

1 association has standing to bring suit on behalf of its members when: (a) its members would otherwise
2 have standing to sue in their own right; (b) the interests it seeks to protect are germane to the
3 organization's purpose; and (c) neither the claim asserted nor the relief request requires the
4 participation of the individual members in the lawsuit.” (*Id.* at 673, quoting *Hunt v. Washington State*
5 *Apple Advertising Com’n* (1977) 432 U.S. 333, 343). Therefore, Plaintiff Pico Neighborhood
6 Association also has standing.

7 **B. The Relevant Elections Are Consistently Plagued By Racially Polarized Voting.**

8 1. *The Definition of Racially Polarized Voting and How It Is Determined*

9 The CVRA defines “racially polarized voting” as “voting in which there is a difference, as
10 defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. § 1973 et seq.),
11 in the choice of candidates or other electoral choices that are preferred by voters in a protected class,
12 and in the choice of candidates and electoral choices that are preferred by voters in the rest of the
13 electorate.” (§ 14026, subd. (e).) The federal jurisprudence regarding “racially polarized voting” over
14 the past thirty-two years finds its roots in Justice Brennan’s decision in *Gingles*, and in particular, the
15 second and third “*Gingles* factors.” Justice Brennan explained that racially polarized voting is tested
16 by two criteria: (1) that the minority group is politically cohesive; and (2) the majority group votes
17 sufficiently as a bloc to enable it to usually defeat the minority group’s preferred candidates.
18 (*Thornburg v. Gingles* (1986) 478 U.S. 30, 51) A minority group is politically cohesive where it
19 supports its preferred choices to a significantly greater degree than the majority group supports those
20 same choices; in elections for office (as opposed to ballot measures), the CVRA focuses on elections in
21 which at least one candidate is a member of the protected class of interest (§ 14028(b)), because those
22 elections usually offer the most probative test of whether voting patterns are racially polarized. (See
23 *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F. 2d 1407, 1416 [“The district court expressly found
24 that predominantly Hispanic sections of Watsonville have, in actual elections, demonstrated near
25 unanimous support for Hispanic candidates. This establishes the requisite political cohesion of the
26 minority group.”].) The extent of majority “bloc voting” sufficient to show racially polarized voting is
27 that which allows the white majority to “usually defeat the minority group’s preferred candidate.”
28 (*Ibid.*) As Justice Brennan explained, it is through establishment of this element that impairment is

1 shown—i.e. that the “at-large method of election [is] imposed or applied in a manner that impairs the
2 ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an
3 election.” (§ 14027; *Gingles*, at p. 51 [“In establishing this last circumstance, the minority group
4 demonstrates that submergence in a white multimember district impedes its ability to elect its chosen
5 representatives.”].)

6 The U.S. Supreme Court in *Gingles* also set forth appropriate methods of identifying racially
7 polarized voting; since individual ballots are not identified by race, race must be imputed through
8 ecological demographic and political data. The long-approved method of ecological regression (“ER”)
9 yields statistical power to determine if there is racially polarized voting if there are not a sufficient
10 number of racially homogenous precincts (90% or more of the precinct is of one particular ethnicity).
11 (See *Benavidez v. City of Irving* (N.D. Tex. 2009) 638 F.Supp.2d 709, 723 [“HPA [(homogenous
12 precinct analysis)] and ER [(ecological regression)] were both approved in *Gingles* and have been
13 utilized by numerous courts in Voting Rights Act cases.”].) The CVRA expressly adopts method
14 methods like ER that have been used in federal Voting Rights Act cases to demonstrate racially
15 polarized voting. (§ 14026, subd. (e) [“The methodologies for estimating group voting behavior as
16 approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec.
17 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove
18 that elections are characterized by racially polarized voting.”].)

19 2. *The Experts’ Analyses*

20 At trial, Plaintiffs and Defendant each offered the statistical analyses of their respective experts
21 – Dr. J. Morgan Kousser and Dr. Jeffrey Lewis, respectively. Though the details and methods of their
22 respective analyses differed in minor ways, the analyses by Plaintiffs’ and Defendant’s experts reveal
23 the same thing— Santa Monica elections that are legally relevant under the CVRA are racially
24 polarized.³ Analyzing elections over the past twenty-four years, a consistent pattern of racially-

25 ³ Dr. Kousser opined that his analysis demonstrates racially polarized voting. Though he had done so
26 in other cases, Dr. Lewis reached no conclusions about racially polarized voting in this case, and
27 declined to opine about whether his analysis demonstrated racially polarized voting. Another of
28 Plaintiffs’ experts, Justin Levitt, evaluated the results of Dr. Lewis’ statistical analyses, and concluded,
like Dr. Kousser, that all of the relevant elections evaluated by Dr. Lewis exhibit racially polarized

1 polarized voting emerges. In most elections where the choice is available, Latino voters strongly
2 prefer a Latino candidate running for Defendant’s city council, but, despite that support, the preferred
3 Latino candidate loses. As a result, though Latino candidates are generally preferred by the Latino
4 electorate in Santa Monica, only one Latino has been elected to the Santa Monica City Council in the
5 72 years of the current election system – 1 out of 71 to serve on the city council.

6 Dr. J. Morgan Kousser, a Caltech professor who has testified in many voting rights cases
7 spanning more than 40 years, analyzed the elections specified by the CVRA: “elections for members of
8 the governing body of the political subdivision . . . in which at least one candidate is a member of a
9 protected class.” (§ 14028 subds. (a), (b)). The CVRA’s focus on elections involving minority
10 candidates is consistent with the view of a majority of federal circuit courts that racially-contested
11 elections are most probative of an electorate’s tendencies with respect to racially polarized voting.⁴

12 In those elections, Dr. Kousser focused on the level of support for minority candidates from
13 minority voters and majority voters respectively, just as the Court in *Gingles*, and many lower courts
14

15 voting, including in some instances racial polarization that is so “stark” that it is similar to the
16 polarization “in the late ‘60s in the Deep South.”

17 ⁴ See *U.S. v. Blaine Cty.* (9th Cir. 2004) 363 F.3d 897, 911 [rejecting defendant’s argument that trial
18 court must give weight to elections involving no minority candidates]; *Ruiz v. Santa Maria* (9th Cir.
19 1998) 160 F.3d 543, 553 [“minority v. non-minority election is more probative of racially polarized
20 voting than a non-minority v. non-minority election” because “[t]he Act means more than securing
21 minority voters’ opportunity to elect whites.”]; *Westwego Citizens for Better Gov’t v. City of Westwego*
22 (5th Cir.1991) 946 F.2d 1109, 1119, n. 15 [“[T]he evidence most probative of racially polarized voting
23 must be drawn from elections including both black and white candidates.”]; *LULAC v. Clements* (5th
24 Cir. en banc 1993) 999 F.2d 831, 864 [“This court has consistently held that elections between white
25 candidates are generally less probative in examining the success of minority-preferred candidates . . .
26 .”]; *Citizens for a Better Gretna v. City of Gretna* (5th Cir.1987) 834 F.2d 496, 502 [“That blacks also
27 support white candidates acceptable to the majority does not negate instances in which white votes
28 defeat a black preference [for a black candidate].”]; *Jenkins v. Red Clay Consol. School Dist. Bd. of
Educ.* (3d Cir. 1993) 4 F.3d 1103, 1128–1129 [“The defendants also argue that the plaintiffs may not
selectively choose which elections to analyze, but rather must analyze all the elections, including those
involving only white candidates. It is only on the basis of such a comprehensive analysis, the
defendants submit, that the court is able to evaluate whether or not there is a pattern of white bloc
voting that usually defeats the minority voters' candidate of choice. We disagree.”].)

1 since then, have done. (See *Gingles*, *supra*, 478 U.S. at pp. 58–61 [“We conclude that the District
2 Court's approach, which tested data derived from three election years in each district, and which
3 revealed that blacks strongly supported black candidates, while, to the black candidates' usual
4 detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard.”]; *Id.* at 81
5 [Appendix A – providing Dr. Grofman’s ecological regression estimates for support for black
6 candidates from, respectively, white and black voters]; see also, e.g., *Garza v. County of Los Angeles*,
7 756 F. Supp. 1298, 1335-37 (C.D. Cal. 1990), *aff’d*, 918 F.2d 763 (9th Cir. 1990) [summarizing the
8 bases on which the court found racially polarized voting: “The results of the ecological regression
9 analyses demonstrated that for all elections analyzed, Hispanic voters generally preferred Hispanic
10 candidates over non-Hispanic candidates. ... Of the elections analyzed by plaintiffs' experts non-
11 Hispanic voters provided majority support for the Hispanic candidates in only three elections, all
12 partisan general election contests in which party affiliation often influences the behavior of voters”];
13 *Benavidez v. Irving Indep. Sch. Dist.* 2014 WL 4055366, *11-12 (N.D. Tex. 2014) [finding racially
14 polarized voting based on Dr. Engstrom’s analysis which the court described as follows: “Dr.
15 Engstrom then conducted a statistical analysis ... to estimate the percentage of Hispanic and non-
16 Hispanic voters who voted for the Hispanic candidate in each election. ... Based on this analysis, Dr.
17 Engstrom opined that voting in Irving ISD trustee elections is racially polarized.”)]⁵

18
19 ⁵ In its closing brief, Defendant argued that the Supreme Court in *Gingles* held that the race of a
20 candidate is “irrelevant,” but what Defendant fails to recognize is that the portion of *Gingles* it relies
21 upon did not command a majority of the Court, and Defendant’s reading of *Gingles* has been rejected
22 by federal circuit courts in favor of a more practical race-sensitive analysis. (See *Ruiz v. City of Santa*
23 *Maria* (9th Cir. 1998) 160 F.3d 543, 550-53 [collecting other cases rejecting Defendant’s view and
24 noting that “non-minority elections do not provide minority voters with the choice of a minority
25 candidate and thus do not fully demonstrate the degree of racially polarized voting in the
26 community.”]). To the extent there is any doubt about whether the race of a candidate impacts the
27 analysis in FVRA cases, there can be no doubt under the CVRA; the statutory language mandates a
28 focus on elections involving minority candidates. (§14028(b) [“The occurrence of racially polarized
voting shall be determined from examining results of elections in which *at least one candidate is a*
member of a protected class ... One circumstance that may be considered ... is the extent to which
candidates who are members of a protected class and who are preferred by voters of the protected
class ... have been elected to the governing body of the political subdivision that is the subject of an
action ...”]). In this analysis, it is not that minority support for minority candidates is presumed; to the

Dr. Kousser provided the details of his analysis, and concluded those elections demonstrate legally significant racially polarized voting.⁶ Specifically, Dr. Kousser evaluated the 7 elections for Santa Monica City Council between 1994 and 2016 that involved at least one Spanish-surnamed candidate⁷ and provided both the point estimates of group support for each candidate as well as the corresponding statistical errors (in parentheses in the charts below):

Weighted Ecological Regression⁸

Year	Latino Candidate(s)	% Latino Support	% Non-Hispanic White Support	Polarized	Won?
1994	Vazquez	145.5 (28.0)	34.9 (1.9)	Yes	No
1996	Alvarez	22.2 (12.9)	15.8 (1.1)	No	No
2002	Aranda	82.6 (12.6)	16.5 (1.3)	Yes	No
2004	Loya	106.0 (12.3)	21.2 (2.0)	Yes	No
2008	Piera-Avila	33.3 (5.2)	5.7 (0.8)	Yes	No
2012	Vazquez	92.7 (9.0)	19.1 (2.0)	Yes	Yes
	Gomez	30.4 (3.3)	2.9 (0.7)	Yes	No
	Duron	5.0 (2.6)	4.4 (0.6)	No	No
2016	de la Torre	88.0 (6.0)	12.9 (1.5)	Yes	No
	Vazquez	78.3 (9.0)	36.6 (2.3)	Yes	Yes

contrary, it must be demonstrated. But both the CVRA and federal caselaw recognize that the most probative test for minority voter support and cohesion usually involves an election with the option of a minority candidate.

⁶ At trial, Dr. Kousser presented his analyses using unweighted ER, weighted ER and ecological inference (“EI”). Dr. Kousser explained that, of these three statistical methods, weighted ER is preferable in this case. Dr. Kousser’s conclusions were the same for each of these three methods, so, for the sake of brevity, only his weighted ER analysis is duplicated here.

⁷ One of Defendant’s city council members, Gleam Davis, testified that she considers herself Latina because her biological father was of Hispanic descent (she was adopted at an early age by non-Hispanic white parents). Though that may be true, the Santa Monica electorate does not recognize her as Latina, as demonstrated by the telephone survey of registered voters conducted by Jonathan Brown; even her fellow council members did not realize she considered herself to be Latina until after the present case was filed. Consistent with the purpose of considering the race of a candidate in assessing racially polarized voting, it is the electorate’s perception that matters, not the unknown self-identification of a candidate. (See footnote 5, *supra*)

⁸ Because each voter could cast votes for up to three or four candidates in a particular election, Prof. Kousser estimated the portion of voters, from each ethnic group, who cast at least one vote for each candidate.

1 Non-Hispanic whites voted statistically significantly differently from Latinos in 6 of the 7 elections.
2 The ecological regression analyses of these elections also reveals that when serious Latino candidates
3 run for the Santa Monica City Council, Latino voters cohesively support those Latino candidates – in
4 all but one of those six elections, a Latino candidate received the most Latino votes, often by a large
5 margin. And in all but one of those six elections, the Latino candidate most favored by Latino voters
6 lost, making the racially polarized voting legally significant. (*Gingles* at p. 56 [“in general, a white
7 bloc vote that normally will defeat the combined strength of minority support plus white ‘crossover’
8 votes rises to the level of legally significant white bloc voting.”]). Even in that one instance (2012 –
9 Tony Vazquez) the Latino candidate barely won, coming in fourth in a four-seat race in that unusual
10 election, in which none of the incumbents who had won four years earlier sought re-election. (*Id.*; see
11 also *Gingles, supra*, 478 U.S. at p. 57, fn. 26 [“Furthermore, the success of a minority candidate in a
12 particular election does not necessarily prove that the district did not experience polarized voting in
13 that election; special circumstances, such as the absence of an opponent, incumbency, or the utilization
14 of bullet voting, may explain minority electoral success in a polarized contest. This list of special
15 circumstances is illustrative, not exclusive.”].)

16 In 1994, Latino voters heavily favored the lone Latino candidate—Tony Vazquez-- but he lost.
17 In 2002, the lone Latina candidate and resident of the Pico Neighborhood—Josefina Aranda—was
18 heavily favored by Latino voters, but she lost. In 2004, the lone Latina candidate and resident of the
19 Pico Neighborhood—Maria Loya—was heavily favored by Latino voters, but she lost. In 2008, the
20 lone Latina candidate and resident of the Pico Neighborhood—Linda Piera-Avila—received significant
21 support from Latino voters, even though she was not a particularly serious candidate.⁹ In 2012, two
22 incumbents—Richard Bloom and Bobby Shriver—decided not to run for re-election, and the two other
23 incumbents who had prevailed in 2008 – Ken Genser and Herb Katz – died during their 2008-12 terms.

25 ⁹ At trial, Dr. Kousser explained that even though Ms. Piera-Avila did not receive support from a
26 majority of Latinos, the contrast between the levels of support she received from Latinos and non-
27 Hispanic whites, respectively, nonetheless demonstrate racially polarized voting, just as the *Gingles*
28 court found very similar levels of support for Mr. Norman in the 1978 and 1980 North Carolina House
races to likewise be consistent with a finding of racially polarized voting. (*Gingles* at 81, Appx. A).

1 The leading Latino candidate—Tony Vazquez—was heavily favored by Latino voters but did not
2 receive nearly as much support from non-Hispanic white voters. He was able to eke out a victory,
3 coming in fourth place in this four-seat race. Finally, in 2016, a race for four city council positions,
4 Oscar de la Torre—a Latino resident of the Pico Neighborhood—was heavily favored by Latinos, but
5 lost. In 2016, Mr. de la Torre received more support from Latinos than did Mr. Vazquez.¹⁰ This is the
6 prototypical illustration of legally significant racially polarized voting – Latino voters favor Latino
7 candidates, but non-Latino voters vote against those candidates, and therefore the favored candidates
8 of the Latino community lose. (See *Gingles*, *supra*, 478 U.S. at pp. 58–61 [“We conclude that the
9 District Court's approach, which tested data derived from three election years in each district, and
10 which revealed that blacks strongly supported black candidates, while, to the black candidates' usual
11 detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard.”]). All of
12 this led Dr. Kousser to conclude: “[b]etween 1994 and 2016 [] Santa Monica city council elections
13 exhibit legally significant racially polarized voting” and “the at-large election system in Santa Monica
14 result[s] in Latinos having less opportunity than non-Latinos to elect representatives of their choice” to
15 the city council. This Court agrees.

16 Defendant’s expert, Dr. Lewis, did not disagree. In fact, he confirmed all of the indicia of
17 racially polarized voting in all of the Santa Monica City Council elections he analyzed involving at
18 least one Latino candidate, as well as in other elections. Specifically, Dr. Lewis confirmed that his ER
19 and EI results demonstrate: (1) that the Latino candidates for city council generally received the most
20 votes from Latino voters; (2) that those Latino candidates received far less support from non-Hispanic
21 whites; and (3) the difference in levels of support between Latino and non-Hispanic white voters were
22
23

24 ¹⁰ Defendant argues that the Court should disregard Mr. de la Torre’s 2016 candidacy because,
25 according to Defendant, Mr. de la Torre intentionally lost that election. But Defendant presented no
26 evidence that Mr. de la Torre did not try to win that election, and Mr. de la Torre unequivocally denied
27 that he deliberately attempted to lose that election. And, the ER analysis by Dr. Lewis further
28 undermines Defendant’s assertion – Mr. de la Torre received essentially the same level of support from
Latino voters in the 2016 council election as he did in his 2014 election for school board, an odd result
if Mr. de la Torre had tried to win one election and lose the other.

statistically significant applying even a 95% confidence level (with the lone exception of Steve Duron):

Year	Latino Candidate(s)	% Latino Support	% Non-Hispanic White Support
2002	Aranda	69 (10)	16 (1)
2004	Loya	106 (14)	21 (2)
2008	Piera-Avila	32 (4)	6 (1)
2012	Vazquez	90 (6)	20 (1)
	Gomez	29 (2)	3 (1)
	Duron	5 (2)	4 (0)
2016	de la Torre	87 (4)	14 (1)
	Vazquez	65 (7)	34 (2)

Dr. Lewis also analyzed elections for other local offices (e.g. school board and college board) and ballot measures such as Propositions 187 (1994), 209 (1996) and 227 (1998). The instant case concerns legal challenges to the election structure for the Santa Monica City Council; where there exist legally relevant election results concerning the Santa Monica City Council, those elections will necessarily be most probative. Consistent with FVRA cases that have addressed the relevance and weight of “exogenous” elections, this Court gives exogenous elections less weight than the endogenous elections discussed above. (See, e.g. *Bone Shirt v. Hazeltine* (8th Cir. 2006) 461 F.3d 1011[acknowledging that exogenous elections are of much less probative value than endogenous elections, some federal courts have relied upon exogenous elections involving minority candidates to *further support* evidence of racially polarized voting in endogenous elections]; *Jenkins v. Red Clay Consol. School Dist. Bd. of Educ.* (3d Cir. 1993) 4 F.3d 1103, 1128–1129 [same]; *Rodriguez v. Harris Cnty, Texas* (2013) 964 F.Supp.2d 686 [same]; *Citizens for a Better Gretna v. City of Gretna, La.* (5th Cir. 1987) 834 F.2d 496, 502–503 [“Although exogenous elections alone could not prove racially polarized voting in Gretna aldermanic elections, the district court properly considered them as additional evidence of bloc voting— particularly in light of the sparsity of available data.”]; *Clay v. Board of Educ. of City of St. Louis* (8th Cir. 1996) 90 F.3d 1357 [exogenous elections “should be used only to supplement the analysis of” endogenous elections]; *Westwego Citizens for Better Gov’t v. City of Westwego* (5th Cir.1991) 946 F.2d 1109 [analysis of exogenous elections appropriate because no

minority candidates had ever run for the governing board of the defendant)]¹¹ Regardless of the weight given to exogenous elections, they may not be used to undermine a finding of racially polarized voting in endogenous elections. (See *Cottier v. City of Martin* (8th Cir.2006) 445 F.3d 1113, 1121–1122 [reversing district court’s reliance on exogenous elections to undermine racially polarized voting in endogenous elections]; *Rural West Tenn. African American Affairs Council v. Sundquist* (W.D. Tenn. 1998) 29 F.Supp.2d 448, 457 [“Certainly, the voting patterns in exogenous elections cannot defeat evidence, statistical or otherwise, about endogenous elections.”], quoting *Cofield v. City of LaGrange* (N.D.Ga.1997) 969 F.Supp. 749, 773.) To hold otherwise would only serve to perpetuate the sort of glass ceiling that the CVRA and FVRA are intended to eliminate. Nonetheless, exogenous elections in Santa Monica further support the conclusion that the levels of support for Latino candidates from Latino and non-Hispanic white voters, respectively, is always statistically significantly different, with non-Hispanic white voters consistently voting against the Latino candidates who are overwhelmingly supported by Latino voters.

Election	Latino Candidate(s)	% Latino Support	% Non-Hispanic White Support
2002 – school board	de la Torre	107 (13)	34 (2)
2004 – school board	Jara	113 (13)	37 (2)
	Leon-Vazquez	98 (9)	44 (2)
	Escarce	74 (8)	44 (1)
2004 – college board	Quinones-Perez	55 (5)	21 (1)
2006 – school board	de la Torre	95 (12)	40 (1)
2008 – school board	Leon-Vazquez	101 (8)	40 (1)
	Escarce	68 (6)	36 (1)
2008 – college board	Quinones-Perez	58 (6)	35 (1)
2010 – school board	de la Torre	94 (8)	33 (1)
2012 – school board	Leon-Vazquez	92 (7)	32 (1)

¹¹ The focus on endogenous elections is particularly appropriate in this case because, as several witnesses confirmed, the political reality of Defendant’s city council elections is very different than that of elections for other governing boards with more circumscribed powers, such as school board and rent board. Dr. Lewis’ ER and EI analyses show that non-Hispanic white voters in Santa Monica will support Latino candidates for offices other than city council. For example, according to Dr. Lewis, Mr. de la Torre received votes from 88% of Latino voters and 33% of non-Hispanic white voters in his school board race in 2014, and when he ran for city council just two years later he received essentially the same level of support from Latino voters (87%) but much less support from non-Hispanic whites (14%) than he had received in the school board race.

	Escarce	62 (6)	29 (1)
1	2014 – school board	de la Torre	88 (7)
2	2014 – college board	Loya	84 (3)
3	2014 – rent board	Duron	46 (8)
4	2016 – college board	Quinones-Perez	85 (5)
			36 (1)

While he provided his estimates based on ER and EI, Dr. Lewis also questioned the propriety of using those methods. Dr. Lewis showed that the “neighborhood model” yields different estimates, but the neighborhood model does not fit real-world patterns of voting behavior for particular candidates and the use of the neighborhood model to undermine ER has been rejected by other courts. (See, e.g., *Garza* at p. 1334). Dr. Lewis claimed that the lack of data from predominantly Hispanic precincts in Santa Monica renders the ER and EI estimates unreliable, but that argument too has been rejected by the courts. (See, e.g., *Fabela v. Farmers Branch* (N.D. Tex. Aug. 2, 2012) 2012 WL 3135545, *10-11, n. 25, n. 33 [relying on EI despite the absence of “precincts with a high concentration of Hispanic voters”]; *Benavidez v. City of Irving* (N.D. Tex. 2009) 638 F.Supp.2d 709, 724-25 [approving use of ER and EI where the precincts analyzed all had “less than 35%” Spanish-surnamed registered voters]; *Perez v. Pasadena Indep. Sch. Dist.* (S.D. Tex. 1997) 958 F.Supp. 1196, 1205, 1220-21, 1229, *aff’d* (5th Cir. 1999) 165 F.3d 368 [relying on ER to show racially polarized voting where the polling place with the highest Latino population was 35% Latino]).¹² To disregard ER and EI estimates because of a lack of predominantly minority precincts would also be contrary to the intent of the Legislature in expressly disavowing a requirement that the minority group is concentrated. (§ 14028 subd. (c) “[t]he fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.”). Dr. Lewis argued that using Spanish-surname matching to estimate the Latino proportion of voting precincts causes a “skew,” but he also acknowledged that Spanish surname matching is the best method for estimating the

¹² Moreover, the comparably low percentage of Latinos among the actual voters in Santa Monica precincts is due in part to the reduced rates of voter registration and turnout among eligible Latino voters. Where limitations in the data derive from reduced political participation by members of the protected class, it would be inappropriate to discard the ER results on that basis, because to do so “would allow voting rights cases to be defeated at the outset by the very barriers to political participation that Congress has sought to remove.” (*Perez*, 958 F.Supp. at 1221 quoting *Clark v. Calhoun Cty.* (5th Cir. 1996) 88 F.3d 1393, 1398)

1 Latino proportion of each precinct, and the conclusion of racially polarized voting in this case would
2 not change even if the estimates were adjusted to account for any skew. Finally, Dr. Lewis showed
3 that ER and EI do not produce accurate estimates of Democratic party *registration* among Latinos in
4 Santa Monica, but that does not undermine the validity or propriety of ER and EI to estimate *voting*
5 behavior in this case. (See *Luna v. County of Kern* (E.D. Cal. 2018) 291 F.Supp.3d 1088, 1123-25
6 [rejecting the same argument]). Most importantly, the CVRA directs this Court to credit the statistical
7 methods accepted by federal courts in FVRA cases, including ER and EI, and Dr. Lewis did not
8 suggest or employ any method that could more accurately estimate group voting behavior in Santa
9 Monica. (§ 14026 subd. (e) [“The methodologies for estimating group voting behavior as approved in
10 applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et
11 seq.) to establish racially polarized voting may be used for purposes of this section to prove that
12 elections are characterized by racially polarized voting.”].)

13 In its closing brief, Defendant argues that there is no racially polarized voting because at least
14 half of what Defendant calls “Latino-preferred” candidacies have been successful in Santa Monica.
15 But that mechanical approach suggested by Defendant – treating a Latino candidate who receives the
16 most votes from Latino voters (and loses, based on the opposition of the non-Hispanic white
17 electorate) the same as a white candidate who receives the second, third or fourth-most votes from
18 Latino voters (and wins, based on the support of the non-Hispanic white electorate) - has been
19 expressly rejected by the courts. (*Ruiz*, 160 F.3d at 554 [rejecting the district court’s “mechanical
20 approach” that viewed the victory of a white candidate who was the second-choice of Latinos in a
21 multi-seat race as undermining a finding of racially polarized voting where Latinos’ first choice was a
22 Latino candidate who lost: “The defeat of Hispanic-preferred Hispanic candidates, however, is more
23 probative of racially polarized voting and is entitled to more evidentiary weight. The district court
24 should also consider the order of preference non-Hispanics and Hispanics assigned Hispanic-preferred
25 Hispanic candidates as well as the order of overall finish of these candidates.”]; see also *id.* at 553
26 [“But the Act’s guarantee of equal opportunity is not met when . . . [c]andidates favored by
27 [minorities] can win, but only if the candidates are white.” (citations and internal quotations omitted)];
28 *Smith v. Clinton* (E.D. Ark. 1988) 687 F.Supp. 1310, 1318, *aff’d*, 488 U.S. 988 (1988) [it is not enough

1 to avoid liability under the FVRA that “candidates favored by blacks can win, but only if the
2 candidates are white.”]; also see *Clarke v. City of Cincinnati* (6th Cir. 1994) 40 F.3d 807, 812 [voting
3 rights laws’ “guarantee of equal opportunity is not met when [] candidates favored by [minority voters]
4 can win, but only if the candidates are white.”]). A more holistic approach that accounts for the
5 political realities of the jurisdiction is required, particularly in light of purpose of the CVRA.
6 (*Jauregui* at at p. 807 [“Thus, the Legislature intended to expand the protections against vote dilution
7 provided by the federal Voting Rights Act of 1965.”]; Assem. Com. on Judiciary, Analysis of Sen. Bill
8 No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 2 [the Legislature sought to remedy
9 what it considered “restrictive interpretations given to the federal act.”]; Cf. *Gingles* at 62-63
10 [“appellants’ theory of racially polarized voting would thwart the goals Congress sought to achieve
11 when it amended § 2, and would prevent courts from performing the ‘functional’ analysis of the
12 political process, and the ‘searching practical evaluation of the past and present reality’”]). To
13 disregard or discount both the order of preference of minority voters and the demonstrated salience of
14 the races of the candidates, as Defendant suggests, would actually exculpate discriminatory at-large
15 election systems where there is a paucity of serious minority candidates willing to run in the at-large
16 system – itself a symptom of the discriminatory election system. (See *Westwego Citizens for Better*
17 *Government v. City of Westwego* (5th Cir. 1989) 872 F. 2d 1201, 1208-1209, n. 9 [“it is precisely this
18 concern that underpins the refusal of this court and of the Supreme Court to preclude vote dilution
19 claims where few or no black candidates have sought offices in the challenged electoral system. To
20 hold otherwise would allow voting rights cases to be defeated at the outset by the very barriers to
21 political participation that Congress has sought to remove.”].)

22 No doubt, a minority group can prefer a non-minority candidate and, in a multi-seat plurality
23 at-large election, can prefer more than one candidate, perhaps to varying degrees, but that does not
24 mean that this Court should blind itself to the races of the candidates, the order of preference of
25 minority voters, and the political realities of Defendant’s elections. When serious Latino candidates
26 have run for Santa Monica’s city council, they have been overwhelmingly supported by Latino voters,
27 receiving more votes from Latino voters than any other candidates. And absent unusual circumstances,
28 because the remainder of the electorate votes against the candidates receiving overwhelming support

1 from Latino voters, those candidates generally still lose. That demonstrates legally relevant racially
2 polarized voting under the CVRA. (See *Gingles, supra*, 478 U.S. at pp. 58–61 [“We conclude that the
3 District Court's approach, which tested data derived from three election years in each district, and
4 which revealed that blacks strongly supported black candidates, while, to the black candidates' usual
5 detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard.”])

6 **C. The Qualitative Factors Further Support a Finding of Racially Polarized**
7 **Voting and a Violation of the CVRA.**

8 Section 14028(e) allows plaintiffs to supplement their statistical evidence with other evidence
9 that is “probative, but not necessary [] to establish a violation” of the CVRA, specifically:

10 “[a] history of discrimination, the use of electoral devices or other voting
11 practices or procedures that may enhance the dilutive effects of at-large
12 elections, denial of access to those processes determining which groups of
13 candidates will receive financial or other support in a given election, the
14 extent to which members of a protected class bear the effects of past
discrimination in areas such as education, employment, and health, which
hinder their ability to participate effectively in the political process, and the
use of overt or subtle racial appeals in political campaigns.”

15 (see also Assembly Committee Analysis of SB 976 (Apr. 2, 2002)). These “probative, but not
16 necessary” factors further support a finding of racially polarized voting in Santa Monica and a violation
17 of the CVRA.

18 *1. History of discrimination.*

19 In *Garza, supra*, 756 F.Supp. at pp. 1339-1340, the court detailed how “[t]he Hispanic
20 community in Los Angeles County has borne the effects of a history of discrimination.” The court
21 described the many sources of discrimination endured by Latinos in Los Angeles County: “restrictive
22 real estate covenants [that] have created limited housing opportunities for the Mexican-origin
23 population”; the “repatriation” program in which “many legal resident aliens and American citizens of
24 Mexican descent were forced or coerced out of the country”; segregation in public schools; exclusion
25 of Latinos from “the use of public facilities” such as public swimming facilities; and “English language
26 literacy [being] a prerequisite for voting” until 1970. (*Id.* at 1340-41). Since Santa Monica is within
27 Los Angeles County, Plaintiffs do not need to re-prove this history of discrimination in this case. (See
28 *Smith v. Clinton* (E.D. Ark. 1988) 687 F.Supp. 1310, 1317 [“We do not believe that this history of

1 discrimination, which affects the exercise of the right to vote in all elections under state law, must be
2 proved anew in each case under the Voting Rights Act.”].) Nonetheless, at trial Plaintiffs presented
3 evidence that this same sort of discrimination was perpetuated specifically against Latinos *in Santa*
4 *Monica* – e.g. restrictive real estate covenants, and approximately 70% of Santa Monica voters voting
5 in favor of Proposition 14 in 1964 to repeal the Rumford Fair Housing Act and therefore again allow
6 racial discrimination in housing; segregation in the use of public swimming facilities; repatriation and
7 voting restrictions applicable to all of California, including Santa Monica.

8 2. *The use of electoral devices or other voting practices or procedures that may*
9 *enhance the dilutive effects of at-large elections.*

10 Defendant stresses that its elections are free of many devices that dilute (or have diluted)
11 minority votes in other jurisdictions, such as numbered posts and majority vote requirements.
12 Nevertheless, the staggering of Defendant’s city council elections enhances the dilutive effect of its at-
13 large election system. (See *City of Lockhart v. United States* (1983) 460 U.S. 125, 135 [“The use of
14 staggered terms also may have a discriminatory effect under some circumstances, since it . . . might
15 reduce the opportunity for single-shot voting or tend to highlight individual races.”]; *City of Rome v.*
16 *United States* (1980) 446 U.S. 156, 183 [same].)

17 3. *The extent to which members of a protected class bear the effects of past*
18 *discrimination in areas such as education, employment, and health, which hinder*
19 *their ability to participate effectively in the political process.*

20 “Courts have [generally] recognized that political participation by minorities tends to be
21 depressed where minority groups suffer effects of prior discrimination such as inferior education, poor
22 employment opportunities and low incomes.” (*Garza, supra* 756 F.Supp. at p. 1347, citing *Gingles,*
23 *supra*, 478 U.S. at p. 69). Where a minority group has less education and wealth than the majority
24 group, that disparity “necessarily inhibits full participation in the political process” by the minority.
25 (*Smith v. Clinton* (E.D. Ark. 1988) 687 F.Supp. 1310, 1317.)

26 As revealed by the most recent Census, Whites enjoy significantly higher income levels than
27 their Hispanic and African American neighbors in Santa Monica—a difference far greater than the
28 national disparity. This is particularly problematic for Latinos in Santa Monica’s at-large elections

1 because of how expensive those elections have become – more than one million dollars was spent in
2 pursuit of the city council seats available in 2012, for example. There is also a severe achievement gap
3 between White students and their African American and Hispanic peers in Santa Monica’s schools that
4 may further contribute to lingering turnout disparities.

5 *4. The use of overt or subtle racial appeals in political campaigns.*

6 In 1994, after opponents of Tony Vazquez advertised that he had voted to allow “Illegal Aliens
7 to Vote” and characterized him as the leader of a Latino gang, causing Mr. Vazquez to lose that
8 election, he let his feelings be known to the Los Angeles Times: “Vazquez blamed his loss on ‘the
9 racism that still exists in our city. ... The racism that came out in this campaign was just unbelievable.’”
10 More recent racial appeals, though less overt, have been used to defeat other Latino candidates for
11 Santa Monica’s city council. For example, when Maria Loya ran in 2004, she was frequently asked
12 whether she could represent all Santa Monica residents or just “her people” – a question that non-
13 Hispanic white candidates were not asked. These sorts of racial appeals are particularly caustic to
14 minority success, because they not only make it more difficult for minority candidates to win, but they
15 also discourage minority candidates from even running.

16 *5. Lack of responsiveness to the Latino Community.*

17 Although not listed in section 14028(e), the unresponsiveness of Defendant to the needs of the
18 Latino community is a factor probative of impaired voting rights. (See *Gingles*, 478 U.S. at 37, 45; see
19 also §14028(e) [indicating that list of factors is not exhaustive – “Other factors *such as* the history of
20 discrimination ...”] (emphasis added)). That unresponsiveness is a natural, perhaps inevitable,
21 consequence of the at-large election system that tends to cause elected officials to “ignore [minority]
22 interests without fear of political consequences.” (*Gingles* 478 U.S. at 48, n. 14).

23 The elements of the city that most residents would want to put at a distance - the freeway, the
24 trash facility, the city’s maintenance yard, a park that continues to emit poisonous methane gas,
25 hazardous waste collection and storage, and, most recently, the train maintenance yard – have all been
26 placed in the Latino-concentrated Pico Neighborhood. At least some of these undesirable elements –
27 e.g the 10-freeway and train maintenance yard – were placed in the Pico Neighborhood at the direction,
28 or with the agreement, of Defendant or members of its city council.

1 Defendant's various commissions (planning commission, arts commission, parks and recreation
2 commission, etc.), the members of which are appointed by Defendant's city council, are nearly devoid
3 of Latino members, in sharp contrast to the significant proportion (16%) of Santa Monica residents
4 who are Latino. That near absence of Latinos on those commissions is important not only in city
5 planning but also for political advancement: in the past 25 years there have been 2 appointments to the
6 Santa Monica City Council, and both of the appointees had served on the planning commission.

7 **D. The At-Large Election System Dilutes the Latino Vote in Santa Monica City**
8 **Council Elections.**

9 Defendant argues that, in addition to racially polarized voting, "dilution" is a separate
10 element of a violation of the CVRA. Even if "dilution" were an element of a CVRA claim,
11 separate and apart from a showing of racially polarized voting, the evidence still demonstrates
12 dilution by the standard proposed by Defendant in its closing brief – "that some alternative
13 method of election would enhance Latino voting power." At trial, Plaintiffs presented several
14 available remedies (district-based elections, cumulative voting, limited voting and ranked choice
15 voting), each of which would enhance Latino voting power over the current at-large system.

16 While it is impossible to predict with certainty the results of future elections, this Court
17 considered the national, state and local experiences with district elections, particularly those involving
18 districts in which the minority group is not a majority of the eligible voters, other available remedial
19 systems replacing at-large elections, and the precinct-level election results in past elections for Santa
20 Monica's city council. Based on that evidence, this Court finds that the district map developed by Mr.
21 Ely, and adopted by this Court as an appropriate remedy, will likely be effective, improving Latinos'
22 ability to elect their preferred candidate or influence the outcome of such an election.

23 **IV. THE CVRA IS NOT UNCONSTITUTIONAL**

24 Defendant argues that the CVRA is unconstitutional, pursuant to a line of cases beginning
25 with *Shaw v. Reno* (1993), 509 U.S. 630. As the court in *Sanchez* held, the CVRA is not
26 unconstitutional; *Shaw* is simply not applicable. (*Sanchez, supra*, 145 Cal.App.4th at pp. 680–
27 682.)

1 **A. The CVRA Is Not Subject to Strict Scrutiny.**

2 Defendant’s argument that the CVRA is unconstitutional begins with the already-rejected
3 notion that the CVRA is subject to strict scrutiny because it employs a racial classification.
4 (Motion, pp. 10-11). The court in *Sanchez* rejected that very argument. (*Sanchez, supra*, 145
5 Cal.App.4th at pp. 680–682.) Rather, although “the CVRA involves race and voting, ... it does
6 not allocate benefits or burdens on the basis of race”; it is race-neutral in that it neither singles out
7 members of any one race nor advantages or disadvantages members of any one race. (*Sanchez*, at
8 p. 680) Accordingly, the CVRA is not subject to strict scrutiny; it is subject to the more
9 permissive rational basis test, which the *Sanchez* court held it easily passes. (*Ibid.*)

10 Defendant seems to suggest that even though the CVRA was not subject to strict scrutiny
11 in Modesto, it must be subject to strict scrutiny in Santa Monica under *Shaw*, because any remedy
12 in Santa Monica will inevitably be based predominantly on race. But, as discussed below, the
13 remedy selected by this Court was not based predominantly on race – the district map was drawn
14 based on the non-racial criteria enumerated in Elections Code section 21620. Moreover, *Shaw*
15 and its progeny do not require strict scrutiny every time that race is pertinent in electoral
16 proceedings. Instead, the *Shaw* line of cases, which focus on the expressive harm to voters
17 conveyed by particular district lines, require strict scrutiny when “race was the predominant factor
18 motivating the legislature’s decision to place a significant number of voters within or without a
19 particular district[.]” (*Alabama Legislative Black Caucus v. Alabama* (2015) 135 S. Ct. 1257,
20 1267, quoting *Miller v. Johnson* (1995) 515 U.S. 900, 916.) This standard does not govern
21 liability under the CVRA, and does not govern the imposition of a remedy in the abstract (e.g.,
22 whether district lines should be drawn or an alternative voting system imposed), but rather it
23 governs the imposition of particular lines in particular places affecting particular voters. The
24 CVRA is silent on *how* district lines must be drawn, or even if districts are necessarily the
25 appropriate remedy. *Sanchez*, at p. 687 [“Upon a finding of liability, [the CVRA] calls only for
26 appropriate remedies, not for any particular, let alone any improper, use of race.”].) This Court is
27 not aware of any applicable case, finding a *Shaw* violation based on the adoption of district
28 elections, as opposed to where lines are drawn (and as explained below, the appropriate remedial

lines in this case were not drawn predominantly based on race). That is precisely why the *Sanchez* court rejected the City of Modesto’s similar reliance on *Shaw* in that case. (*Sanchez*, *supra*, 145 Cal.App.4th at pp. 682–683.)

B. The CVRA Easily Satisfies the Rational Basis Test.

The State of California has a legitimate—indeed compelling—interest in preventing race discrimination in voting and in particular curing demonstrated vote dilution. This interest is consistent with and reflects the purposes of the California Constitution as well as the Fourteenth and Fifteenth Amendments to the United States Constitution. (See § 14027 [identifying the abridgment of voting rights as the end to be prohibited]; § 14031 [indicating that the CVRA was “enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution”]; see also Cal. Const., Art. I, § 7 [guaranteeing, among other rights, the right to equal protection of the laws]; *id.* Art. II, § 2 [guaranteeing the right to vote]; *Sanchez* at p. 680 [identifying “[c]uring vote dilution” as a purpose of the CVRA].) The CVRA, which provides a private right of action to seek remedies for vote dilution, is rationally related to the State’s interest in curing vote dilution, protecting the right to vote, protecting the right to equal protection of the laws, and protecting the integrity of the electoral process. (*Jauregui* at pp. 799–801; *Sanchez*, at p. 680). As discussed above, Defendant’s election system has resulted in vote dilution – the very injury that the CVRA is intended to prevent and remedy – and, though not required by the CVRA, the evidence explored below even indicates that the dilution remedied in this case was the product of intentional discrimination. And, as discussed below, there are several remedial options to effectively remedy that vote dilution in this case. Accordingly, the CVRA is constitutional and easily satisfies the rational basis test, on its face and in its specific application to Defendant.

C. The CVRA Would Also Satisfy Strict Scrutiny.

Even if strict scrutiny were found to apply to the CVRA, the CVRA is narrowly tailored to achieve a compelling state interest and therefore also satisfies that test. First, California has compelling state interests in protecting all of its citizens’ rights to vote and to participate equally in the political process, protecting the integrity of the electoral process, and in ensuring that its

1 laws and those of its subdivisions do not result in vote dilution in violation of its robust
2 commitment to equal protection of the laws. See Cal. Const., Art. I, § 7, Art. II, § 2; Elec. Code §§
3 14027, 14031; *Sanchez*, at p. 680; *Jauregui*, at pp. 799-801).

4 Second, the CVRA is narrowly tailored to achieve its compelling interests in preventing
5 the abridgment of the right to vote. The CVRA requires a person to demonstrate the existence of
6 racially polarized voting to prove a violation. (§ 14028 subd. (a)). Where racially polarized voting
7 does not exist, the CVRA will not require a remedy. As with the FVRA, both the findings of
8 liability and the establishment of a remedy under the CVRA do not rely on assumptions about
9 race, but rather on factual patterns specific to particular communities in particular geographic
10 regions, based on electoral evidence. (Compare *Shaw v. Reno* (1993) 509 U.S. 630, 647-648
11 [unconstitutional racial gerrymandering is based on the *assumption* that “members of the same
12 racial group—regardless of their age, education, economic status, or the community in which they
13 live—think alike, share the same political interests, and will prefer the same candidates at the
14 polls” with *id.* at 653 [distinguishing the Voting Rights Act, in which “racial bloc voting and
15 minority-group political cohesion never can be assumed, but specifically must be proved in each
16 case” based on evidence of group voting behavior].) And though federal cases have not
17 considered the CVRA specifically in this regard, the Supreme Court has repeatedly implied that
18 remedies narrowly drawn to combat racially polarized voting and discriminatory vote dilution will
19 survive strict scrutiny.¹³ As a result, the CVRA sweeps no wider than necessary to equitably
20 secure for Californians their rights to vote and to participate in the political process. (*Jauregui*, at
21

22 ¹³ See, e.g., *League of United Latin Am. Citizens v. Perry* (2006) 548 U.S. 399, 475 & n.12 (Stevens,
23 J., joined by Breyer, J., concurring in part and dissenting in part); *id.* at p. 518–519 (Scalia, J., joined
24 by Thomas, J., Alito, J., and Roberts, C.J., concurring in the judgment in part and dissenting in part);
25 *Bush v. Vera* (1996) 517 U.S. 952, 990, 994 (O’Connor, J., concurring); *Shaw v. Reno* (1993) 509 U.S.
26 630, 653-54. Indeed, just last year, in *Bethune-Hill v. Va. State Bd. of Elections* (2017) 137 S. Ct. 788,
27 the Supreme Court upheld a Virginia state Senate district against challenge on the theory that it was
28 predominantly driven by race, but in a manner designed to meet strict scrutiny through compliance
with the Voting Rights Act. (*Id.* at 802.) Neither party contested that compliance with the Voting
Rights Act would satisfy strict scrutiny, but the Court does not usually permit the litigants to concede
the justification for its most exacting level of scrutiny.

p. 802) And if the CVRA generally satisfies strict scrutiny, it a fortiori satisfies strict scrutiny in application here, where as described below, the dilution remedied was proven to be the product of intentional discrimination.

V. THE EQUAL PROTECTION CLAUSE OF THE CALIFORNIA CONSTITUTION

Article I, section 7 of the California Constitution mirrors the Equal Protection Clause of the U.S. Constitution (Fourteenth Amendment).¹⁴ Where governmental actions or omissions are motivated by a racially discriminatory purpose they violate the Equal Protection Clause, and when voting rights are implicated, “[t]he Supreme Court has established that official actions motivated by discriminatory intent ‘have no legitimacy at all’ (*N. Carolina NAACP v. McCrory* (4th Cir. 2016) 831 F.3d 204, 239 [surveying Supreme Court cases]; see also generally *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, cert. denied (1991) 111 S.Ct. 681). Neither the passage of time, nor the modification of the original enactment, can save a provision enacted with discriminatory intent. (*Id.*; *Hunter v. Underwood* (1985) 471 U.S. 222 [invalidating a provision of the 1901 Alabama Constitution because it was motivated by a desire to disenfranchise African Americans, even though its “more blatantly discriminatory” portions had since been removed].)

“Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. . . . [including] the historical background of the decision.” *Village of Arlington Heights v. Metro. Housing Dev. Corp.* (1977) 429 U.S. 252, 266-68. Sometimes, racially discriminatory intent can be demonstrated by the clear statements of one or more decisionmakers. But, recognizing that these “smoking gun” admissions of racially discriminatory intent are exceedingly rare, in *Arlington Heights*, the U.S. Supreme Court described a number of *potential, non-exhaustive*, sources of evidence that might shed light on the question of discriminatory intent in the absence of a smoking gun admission:

¹⁴ Other than provisions relating exclusively to school integration, Article I section 7 provides “A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.”

1 The impact of the official action -- whether it bears more heavily on one race
2 than another, may provide an important starting point. Sometimes a clear
3 pattern, unexplainable on grounds other than race, emerges from the effect of
4 the state action even when the governing legislation appears neutral on its
5 face. The evidentiary inquiry is then relatively easy. But such cases are
6 rare. Absent a pattern as stark as that in *Gomillion* or *Yick Wo*, impact alone
7 is not determinative, and the Court must look to other evidence. The
8 historical background of the decision is one evidentiary source, particularly
9 if it reveals a series of official actions taken for invidious purposes. The
10 specific sequence of events leading up to the challenged decision also may
11 shed some light on the decisionmaker's purposes. ... Departures from the
12 normal procedural sequence also might afford evidence that improper
13 purposes are playing a role. Substantive departures too may be relevant,
14 particularly if the factors usually considered important by the decisionmaker
15 strongly favor a decision contrary to the one reached. The legislative or
16 administrative history may be highly relevant, especially where there are
17 contemporary statements by members of the decisionmaking body, minutes
18 of its meetings, or reports. In some extraordinary instances, the members
19 might be called to the stand at trial to testify concerning the purpose of the
20 official action, although even then such testimony frequently will be barred
21 by privilege. The foregoing summary identifies, without purporting to be
22 exhaustive, subjects of proper inquiry in determining whether racially
23 discriminatory intent existed.

24 (*Id.* at 266-268 (citations omitted). “[P]laintiffs are not required to show that [discriminatory] intent
25 was the sole purpose of the [challenged government decision],” or even the “primary purpose,” just
26 that it was “a purpose.” (*Brown v. Board of Com’rs of Chattanooga, Tenn.* (E.D. Tenn. 1989) 722 F.
27 Supp. 380, 389, citing *Arlington Heights* at 265 and *Bolden v. City of Mobile* (S.D. Ala. 1982) 543 F.
28 Supp. 1050, 1072).

29 **VI. DEFENDANT’S AT-LARGE ELECTION SYSTEM VIOLATES THE EQUAL**
30 **PROTECTION CLAUSE OF THE CALIFORNIA CONSTITUTION.**

31 Defendant’s at-large election system was adopted and/or maintained with a discriminatory
32 intent on at least two occasions – in 1946 and in 1992, either of which necessitates this Court
33 invalidating the at-large election system. (See *Hunter v. Underwood* (1985) 471 U.S. 222 [invalidating

1 a provision of the 1901 Alabama Constitution because it was motivated by a desire to disenfranchise
2 African Americans, even though its “more blatantly discriminatory” portions had since been removed];
3 *Brown, supra* 722 F. Supp. at p. 389 [striking at-large election system based on discriminatory intent in
4 1911 even absent discriminatory intent in maintaining that system in decisions of 1957, the late 1960s
5 and early 1970s]). In the early 1990s, the Charter Review Commission, impaneled by Defendant’s
6 city council, concluded that “a shift from the at-large plurality system currently in use” was necessary
7 “to distribute empowerment more broadly in Santa Monica, particularly to ethnic groups ...” Even
8 back in 1946, it was understood that at-large elections would “starve out minority groups,” leaving “the
9 Jewish, colored [and] Mexican [no place to] go for aid in his special problems” “with seven
10 councilmen elected AT-LARGE ... mostly originat[ing] from [the wealthy white neighborhood] North
11 of Montana [and] without regard [for] minorities.” Yet, in each instance Defendant chose at-large
12 elections.

13 **A. 1946**

14 Defendant’s current at-large election system has a long history that has its roots in 1946.¹⁵ As
15 Dr. Kousser’s testimony at trial, and his report to the Santa Monica Charter Review Committee in
16 1992, explained, proponents and opponents of the at-large system alike, bluntly recognized that the at-
17 large system would impair minority representation. And, another ballot measure involving a pure
18 racial issue was on the ballot at the same time in 1946 – Proposition 11, which sought to ban racial
19 discrimination in employment. Dr. Kousser’s statistical analysis shows a strong correlation between
20 voting in favor of the at-large charter provision and against the contemporaneous Proposition 11,
21 further demonstrating the understanding that at-large elections would prevent minority representation.

22 When the *Arlington Heights* factors are each considered, those non-exhaustive factors militate
23 in favor of finding discriminatory intent in the 1946 adoption of the current at large election system.
24
25

26 ¹⁵ In 1946, Defendant adopted its current council-manager form of government, and chose an at-large
27 elected city council and school board. The at-large election feature remains in Defendant’s city
28 charter. (Santa Monica Charter § 600 [“The City Council shall consist of seven members elected from
the City at large ...”], § 900)

1 The discriminatory impact of the at-large election system was felt immediately after its
2 adoption in 1946. Though several ran, no candidates of color were elected to the Santa Monica City
3 Council in the 1940s, 50s or 60s. (See *Bolden v. City of Mobile* (S.D. Ala. 1982) 542 F.Supp. 1070,
4 1076 [relying on the lack of success of black candidates over several decades to show disparate impact,
5 even without a showing that black voters voted for each of the particular black candidates going back
6 to 1874].) Moreover, the impact on the minority-concentrated Pico Neighborhood over the past 72
7 years, discussed in Section III(C)(5) above, also demonstrates the discriminatory impact of the at-large
8 election system in this case. (*Gingles* 478 U.S. at 48, n. 14 [describing how at-large election systems
9 tend to cause elected officials to “ignore [minority] interests without fear of political consequences.”].)

10 The historical background of the decision in 1946 also militates in favor of a finding of
11 discriminatory intent. At-large elections are well known to disadvantage minorities, and that was well
12 understood in Santa Monica in 1946. The non-white population in Santa Monica was growing at a
13 faster rate than the white population – enough that the chief newspaper in Santa Monica, the Evening
14 Outlook, was alarmed by the rate of increase in the non-white population. The fifteen Freeholders,
15 who proposed only at-large elections to the Santa Monica electorate in 1946, were all white, and all but
16 one lived on the wealthier whiter side of Wilshire Boulevard. At-large elections were, therefore, in
17 their self-interest, and at least three of the Freeholders successfully ran for seats on the city council in
18 the years that followed. The Santa Monica commissioners had adopted a resolution calling for all
19 Japanese Americans to be deported to Japan rather than being allowed to return to their homes after
20 being interned, Los Angeles County had been marred by the zoot suit riots, and racial tensions were
21 prevalent enough in Santa Monica that a Committee on Interracial Progress was necessary. At the
22 same time as the 1946 Santa Monica charter amendment was approved, a significant majority of Santa
23 Monica voters voted against Proposition 11, which would have outlawed racial discrimination in
24 employment, and Dr. Kousser’s EI analysis shows a very strong correlation between voting for the
25 charter amendment and against Proposition 11.

26 The sequence of events leading up to the adoption of the at-large system in 1946 likewise
27 supports a finding of discriminatory intent. As Dr. Kousser detailed, in 1946, the Freeholders waffled
28 between giving voters a choice of having some district elections or just at-large elections, and

1 ultimately chose to only present an at-large election option despite the recognition that district elections
2 would be better for minority representation.

3 The substantive and procedural departures from the norm also support a finding of
4 discriminatory intent. In 1946, the Freeholders' reversed course on offering to the voters a hybrid
5 system (some district, and some at-large, elected council seats) in the wake of discussion of minority
6 representation, and, after a series of votes the local newspaper called "unexpected," offered the voters
7 only the option of at-large elections.

8 The legislative and administrative history in 1946 is difficult to discern. There appears to have
9 been no report of the Freeholders' discussions, but the statements by proponents and opponents of the
10 charter amendment demonstrate that all understood that at-large elections would diminish minorities'
11 influence on elections.

12 **B. 1992**

13 After winning a FVRA case ending at-large elections in Watsonville in 1989, Joaquin Avila
14 (later principally involved in drafting the CVRA) and other attorneys began to file and threaten to file
15 lawsuits challenging at-large elections throughout California on the grounds that they discriminated
16 against Latinos. The Santa Monica Citizens United to Reform Elections (CURE) specifically noted the
17 Watsonville case in urging the Santa Monica City Council to place the issue of substituting district for
18 at-large elections on the ballot, allowing Santa Monica voters to decide the question. With the issue of
19 at-large elections diluting minority vote receiving increased attention in Santa Monica and throughout
20 California, Defendant appointed a 15-member Charter Review Commission to study the matter and
21 make recommendations to the City Council. As part of their investigation, the Charter Review
22 Commission sought the analysis of Dr. Kousser, who had just completed his work in *Garza* regarding
23 discriminatory intent in the way Los Angeles County's supervisorial districts had been drawn. Dr.
24 Kousser was asked whether Santa Monica's at-large election system was adopted or maintained for a
25 discriminatory purpose, and Dr. Kousser concluded that it was, for all of the reasons discussed above.
26 Based on their extensive study and investigations, the near-unanimous Charter Review Commission
27 recommended that Defendant's at-large election system be eliminated. The principal reason for that
28

1 recommendation was that the at-large system prevents minorities and the minority-concentrated Pico
2 Neighborhood from having a seat at the table.

3 That recommendation went to the City Council in July 1992, and was the subject of a public
4 city council meeting. Excerpts from the video of that hours-long meeting were played at trial, and
5 provide direct evidence of the intent of the then-members of Defendant's City Council. One speaker
6 after another – members of the Charter Review Commission, the public, an attorney from the Mexican
7 American Legal Defense and Education Fund, and even a former councilmember – urged Defendant's
8 City Council to change its at-large election system. Many of the speakers specifically stressed that the
9 at-large system discriminated against Latino voters and/or that courts might rule that they did in an
10 appropriate case. Though the City Council understood well that the at-large system prevented racial
11 minorities from achieving representation – that point was made by the Charter Review Commission's
12 report and several speakers and was never challenged – the members refused by a 4-3 vote to allow the
13 voters to change the system that had elected them. Councilmember Dennis Zane explained his
14 professed reasoning – in a district system, Santa Monica would no longer be able to place a
15 disproportionate share of affordable housing into the minority-concentrated Pico Neighborhood, where,
16 according to the unrefuted remarks at the July 1992 council meeting, the majority of the city's
17 affordable housing was already located, because the Pico Neighborhood district's representative would
18 oppose it. Mr. Zane's comments were candid and revealing. He specifically phrased the issue as one
19 of Latino representation versus affordable housing: "So you gain the representation but you lose the
20 housing."¹⁶ While this professed rationale could be characterized as not demonstrating that Mr. Zane
21 or his colleagues "harbored any ethnic or racial animus toward the . . . Hispanic community," it
22 nonetheless reflects intentional discrimination—Mr. Zane understood that his action would harm

23
24 ¹⁶ Mr. Zane's insistence on a tradeoff between Latino representation and policy goals that he believed
25 would be more likely to be accomplished by an at-large council echoed comments of the *Santa Monica*
26 *Evening Outlook*, the chief sponsor of and spokesman for the charter change to an at-large city council
27 in 1946. "[G]roups such as organized labor and the colored people," the newspaper announced, should
28 realize that "The interest of minorities is always best protected by a system which favors the election
of liberal-minded persons who are not compelled to play peanut politics. Such liberal-minded persons,
of high caliber, will run for office and be elected if elections are held at large."

1 Latinos' voting power, and he took that action to maintain the power of his political group to continue
2 dumping affordable housing in the Latino-concentrated neighborhood despite their opposition. (See
3 *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 778 (J. Kozinski, concurring) [finding
4 that incumbents preserving their power by drawing district lines that avoided a higher proportion of
5 Latinos in one district was intentionally discriminatory despite the lack of any racial animus], cert.
6 denied (1991) 111 S.Ct. 681)

7 In addition to Mr. Zane's "smoking gun" contemporaneous explanation of his own decisive
8 vote, the Court also considers the circumstantial evidence of intent revealed by the *Arlington Heights*
9 factors. While those non-exhaustive factors do not each reveal discrimination to the same extent, on
10 balance, they also militate in favor of finding discriminatory intent in this case.

11 The discriminatory impact of the at-large election system was felt immediately after its
12 maintenance in 1992. The first and only Latino elected to the Santa Monica City Council lost his re-
13 election bid in 1994 in an election marred by racial appeals – a notable anomaly in Santa Monica where
14 election records establish that incumbents lose very rarely. (See *Bolden v. City of Mobile* (S.D. Ala.
15 1982) 542 F.Supp. 1070, 1076 [relying on the lack of success of black candidates over several decades
16 to show disparate impact, even without a showing that black voters voted for each of the particular
17 black candidates going back to 1874].) Moreover, the impact on the minority-concentrated Pico
18 Neighborhood over the past 72 years, discussed in Section III(C)(5) above, also demonstrates the
19 discriminatory impact of the at-large election system in this case, and has continued well past 1992.
20 (*Gingles* 478 U.S. at 48, n. 14 [describing how at-large election systems tend to cause elected officials
21 to "ignore [minority] interests without fear of political consequences."].)

22 The historical background of the decision in 1992 also militate in favor of finding a
23 discriminatory intent. At-large elections are well known to disadvantage minorities, and that was well
24 understood in Santa Monica in 1992. In 1992 the non-white population was sufficiently compact (in
25 the Pico Neighborhood) that Dr. Leo Estrada concluded that a council district could be drawn with a
26 combined majority of Latino and African American residents. While the Santa Monica City Council of
27 the late 1980s and early 1990s was sometimes supportive of policies and programs that benefited racial
28 minorities, as pointed out by Defendant's expert, Dr. Lichtman, the members also supported a curfew

1 that Santa Monica’s lone Latino council member described as “institutional racism,” as pointed out by
2 Dr. Kousser, and they understood that district elections would undermine the slate politics that had
3 facilitated the election of many of them.

4 The sequence of events leading up to the maintenance of the at-large system in 1992, likewise
5 supports a finding of discriminatory intent. In 1992, the Charter Review Commission, and the CURE
6 group before that, intertwined the issue of district elections with racial justice, and the connection was
7 clear from the video of the July 1992 city council meeting, immediately prior to Defendant’s city
8 council voting to prevent Santa Monica voters from adopting district elections.

9 The substantive and procedural departures from the norm also support a finding of
10 discriminatory intent. In 1992, the Charter Review Commission recommended scrapping the at-large
11 election system, principally because of its deleterious effect on minority representation. While
12 Defendant’s City Council adopted nearly all of the Charter Review Commission’s recommendations, it
13 refused to adopt any change to the at-large elections or even submit the issue to the voters.

14 Finally, as discussed above, the legislative and administrative history in 1992, specifically the
15 Charter Review Commission report and the video of the July 1992 city council meeting, demonstrates a
16 deliberate decision to maintain the existing at-large election structure because of, and not merely
17 despite, the at-large system’s impact on Santa Monica’s minority population.

18 **VII. REMEDIES**

19 Having found that Defendant’s election system violates the CVRA and the Equal Protection
20 Clause, the Court must implement a remedy to cure those violations. The CVRA specifies that the
21 implementation of appropriate remedies is mandatory:

22 “Upon a finding of a violation of Section 14027 and Section 14028, the court *shall*
23 implement appropriate remedies, including the imposition of district-based elections, that
24 are tailored to remedy the violation.”
25 (Elec. Code § 14029 (emphasis added)). The federal courts in FVRA cases have similarly and
26 unequivocally held that once a violation is found, a remedy must be adopted. (See, e.g. *Williams v.*
27 *Texarkana, Ark.* (8th Cir. 1994) 32 F.3d 1265, 1268 [Once a violation of the FVRA is found, “[i]f [the]
28 appropriate legislative body does not propose a remedy, the district court must fashion a remedial

plan”]; *Bone Shirt v. Hazeltine* (D.S.D. 2005) 387 F.Supp.2d 1035, 1038 [same]; see also *Reynolds v. Sims* (1964) 377 U.S. 533, 585 [“[O]nce a State’s legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan.”].) Likewise, in regards to an Equal Protection violation implicating voting rights, “[t]he Supreme Court has established that official actions motivated by discriminatory intent ‘have no legitimacy at all’ Thus, the proper remedy for a legal provision enacted with discriminatory intent is invalidation.” (*N. Carolina NAACP v. McCrory* (4th Cir. 2016) 831 F.3d 204, 239 [surveying Supreme Court cases].)

A. The Court Has Broad Authority to Remedy Defendant’s Violation of the California Voting Rights Act and the Equal Protection Clause.

Once liability is established under the CVRA, the Court has a broad range of remedies from which to choose. (§ 14029 [“Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.”]; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 670). The range of remedies from which this Court may choose is at least as broad as those remedies that have been adopted in FVRA cases. (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 807 [“Thus, the Legislature intended to expand the protections against vote dilution provided by the federal Voting Rights Act of 1965. It would be inconsistent with the evident legislative intent to expand protections against vote dilution to narrowly limit the scope of . . . relief as defendant asserts. Logically, the appropriate remedies language in section 14029 extends to . . . orders of the type approved under the federal Voting Rights Act of 1965.”].) Thus, the range of remedies available to this Court includes not only the imposition of district-based elections (§ 14029), but also, for example, less common at-large remedies imposed in FVRA cases such as cumulative voting, limited voting and untagging elections. (*U.S. v. Village of Port Chester* (S.D.N.Y. 2010) 704 F.Supp.2d 411 [ordering cumulative voting and untagging elections]; *U.S. v. City of Euclid* (N.D. Ohio 2008) 580 F.Supp.2d 584 [ordering limited voting]). This Court may also order a special election. (See *Neal v. Harris* (4th

1 Cir. 1987) 837 F.2d 632, 634 [affirming trial court's order requiring a special election, during the terms
2 of the members elected under the at-large system, rather than awaiting the date of the next regularly
3 scheduled election, when their terms would have expired.]; *Ketchum v. City Council of Chicago* (N.D.
4 Ill. 1985) 630 F.Supp. 551, 564-566 [ordering special elections to replace aldermen elected under a
5 system that violated the FVRA]; *Bell v. Southwell* (5th. Cir. 1967) 376 F.2d 659, 665 [voiding an
6 unlawful election, prohibiting the winner of that unlawful election from taking office, and ordering that
7 a special election be held promptly]; *Coalition for Education in District One v. Board of Elections*
8 (S.D.N.Y. 1974) 370 F.Supp. 42, 58, aff'd (2nd Cir. 1974) 495 F.2d 1090; *Tucker v. Burford* (N.D.
9 Miss. 1985) 603 F.Supp. 276, 279; *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of*
10 *Albany* (2d Cir. 2004) 357 F.3d 260, 262-263 [applauding the district court for ordering a special
11 election].) Indeed, courts have even used their remedial authority to remove all members of a city
12 council where necessary. (See *Bell v. Southwell* (5th Cir. 1967) 367 F.2d 659, 665; *Williams v. City of*
13 *Texarkana* (W.D. Ark. 1993) 861 F.Supp. 771, aff'd (8th Cir. 1994) 32 F.3d 1265; *Hellebust v.*
14 *Brownback* (10th Cir. 1994) 42 F.3d 1331).

15
16 The broad remedial authority granted to this Court by Section 14029 of the CVRA extends to
17 remedies that are inconsistent with a city charter (*Jauregui, supra*, 226 Cal. App. 4th at pp. 794-804)
18 and even remedies that would otherwise be inconsistent with state laws enacted prior to the CVRA.
19 (*Id.* at pp. 804-808 [affirming the trial court's injunction, pursuant to section 14029 of the CVRA,
20 prohibiting the City of Palmdale from certifying its at-large election results despite that injunction
21 being inconsistent with Code of Civil Procedure section 526(b)(4) and Civil Code section 3423(d)]).
22 Likewise, because the California Constitution is supreme over state statutes, any remedy for
23 Defendant's violation of the Equal Protection Clause is unimpeded by administrative state statutes.
24 (*Am. Acad. of Pediatrics v. Lungren* (1997) 16 Cal.4th 307 [invalidating a state statute because it
25 impinged upon rights guaranteed by the California Constitution]). Voting rights are the most
26 fundamental in our democratic system; when those rights have been violated, this Court has the
27 obligation to ensure that the remedy is up to the task.
28

1 **B. The Remedy Should Be Prompt and Complete, and Remedy Past Harm as Well as**
2 **Prevent Future Violations.**

3 Any remedial plan should fully remedy the violation. (See, e.g., *Dillard v. Crenshaw Cnty.,*
4 *Ala.* (11th Cir. 1987) 831 F.2d 246, 250 [“The court should exercise its traditional equitable powers to
5 fashion the relief so that it *completely* remedies the prior dilution of minority voting strength and *fully*
6 provides equal opportunity for minority citizens to participate and to elect candidates of their choice.
7 ... This Court cannot authorize an element of an election proposal that will not with certitude
8 completely remedy the [] violation.”] (italics added); see also *Harvell v. Blytheville Sch. Dist. No. 5* (8th
9 Cir. 1997) 126 F.3d 1038, 1040 [affirming trial court’s rejection of defendant’s plan because it would
10 not “completely remedy the violation”]; *LULAC Council No. 4836 v. Midland Indep. Sch. Dist.* (W.D.
11 Tex. 1986) 648 F.Supp. 596, 609; *United States v. Osceola Cnty., Fla.* (M.D. Fla. 2006) 474 F.Supp.2d
12 1254, 1256.) The United States Supreme Court has explained that the court’s duty is to both remedy
13 past harm and prevent future violations of minority voting rights:

14 [T]he court has not merely the power, but the duty, to render a decree which will, so
15 far as possible, eliminate the discriminatory effects of the past as well as bar like
16 discrimination in the future.

17 (*Louisiana v. United States* (1965) 380 U.S. 145, 154; see also *Buchanan v. City of Jackson, Tenn.,*
18 (W.D. Tenn. 1988) 683 F. Supp. 1537, 1541 [same, rejecting defendant’s hybrid at-large remedial
19 plan].)

20 The remedy for a violation of the Equal Protection Clause should likewise be prompt and
21 complete. Courts have consistently held that intentional racial discrimination is so caustic to our
22 system of government that once intentional discrimination is shown, “the ‘racial discrimination must be
23 eliminated root and branch’” by “a remedy that will fully correct past wrongs.” (*N. Carolina NAACP*
24 *v. McCrory* (4th Cir. 2016) 831 F.3d 204, 239, quoting *Green v. Cty. Sch. Bd.* (1968) 391 U.S. 430,
25 437–439, *Smith v. Town of Clarkton* (4th Cir. 1982) 682 F.2d 1055, 1068.)

26 It is also imperative that once a violation of voting rights is found, remedies be implemented
27 promptly, lest minority residents continue to be deprived of their fair representation. (See *Williams v.*
28 *City of Dallas* (N.D. Tex. 1990) 734 F.Supp. 1317 [“*In no way will this Court tell African-Americans*

1 *and Hispanics that they must wait any longer for their voting rights in the City of Dallas.”]*, emphasis
2 in original)

3 **VIII. THE APPROPRIATE REMEDY IN THIS CASE IS THE PROMPT**
4 **IMPLEMENTATION OF THE SEVEN-DISTRICT PLAN PRESENTED AT TRIAL.**

5 Though other remedies, such as cumulative voting, limited voting and ranked choice voting, are
6 possible options in a CVRA action and would improve Latino voting power in Santa Monica, the
7 parties agreed that, given the local context in this case – including socioeconomic and electoral
8 patterns, the voting experience of the local population, and the election administration practicalities
9 present here – a district-based remedy is preferable. The choice of a district-based remedy is also
10 consistent with the overwhelming majority of CVRA and FVRA cases.

11 At trial, only one district plan was presented to the Court – Trial Exhibit 261. That plan was
12 developed by David Ely, following the criteria mandated by Section 21620 of the Elections Code,
13 applicable to charter cities. The populations of the proposed districts are all within 10% of one
14 another; areas with similar demographics (e.g. socio-economic status) are grouped together where
15 possible and the historic neighborhoods of Santa Monica are intact to the extent possible; natural
16 boundaries such as main roads and existing precinct boundaries are used to divide the districts where
17 possible; and neither race nor the residences of incumbents was a predominant factor in drawing any of
18 the districts.

19 Trial testimony revealed that jurisdictions that have switched from at-large elections to district
20 elections as a result of CVRA cases have experienced a pronounced increase in minority electoral
21 power, including Latino representation. Even in districts where the minority group is one-third or less
22 of a district’s electorate, minority candidates previously unsuccessful in at-large elections have won
23 district elections. (See, e.g., Florence Adams, *Latinos and Local Representation: Changing Realities,*
24 *Emerging Theories* (2000), at pp. 49–61.) The particular demographics and electoral experiences of
25 Santa Monica suggest that the seven-district plan would similarly result in the increased ability of the
26 minority population to elect candidates of their choice or influence the outcomes of elections. First,
27
28

1 Mr. Ely’s analysis of various elections shows that the Latino candidates preferred by Latino voters
2 perform much better in the Pico Neighborhood district of Mr. Ely’s plan than they do in other parts of
3 the city – while they lose citywide, they often receive the most votes in the Pico Neighborhood district.
4 Second, the Latino proportion of eligible voters is much greater in the Pico Neighborhood district than
5 the city as a whole. In contrast to 13.64% of the citizen-voting-age-population in the city as a whole,
6 Latinos comprise 30% of the citizen-voting-age-population in the Pico Neighborhood district. That
7 portion of the population and citizen-voting-age-population falls squarely within the range the U.S.
8 Supreme Court deems to be an influence district. (*Georgia v. Aschcroft* (2003) 539 U.S. 461, 470–471,
9 482 [evaluating the impact of “influence districts,” defined as districts with a minority electorate “of
10 between 25% and 50%,”]) Third, testimony established that Latinos in the Pico Neighborhood are
11 politically organized in a manner that would more likely translate to equitable electoral strength.
12 Fourth, testimony also established that districts tend to reduce the campaign effects of wealth
13 disparities between the majority and minority communities, which are pronounced in Santa Monica.
14

15 Though given the opportunity to do so, Defendant did not propose a remedy. The six-week trial
16 of this case was not bifurcated between liability and remedies. Though Plaintiffs presented potential
17 remedies at trial, Defendant did not propose any remedy at all in the event that the Court found in favor
18 of Plaintiffs. On November 8, 2018 this Court gave Defendant another opportunity, ordering the
19 parties to file briefs and attend a hearing on December 7, 2018 “regarding the appropriate/preferred
20 remedy for violation of the [CVRA].”¹⁷ Still, Defendant did not propose a remedy, other than to say
21 that it prefers the implementation of district-based elections over the less-common at-large remedies

22 ¹⁷ The schedule set by this Court on November 8, 2018 is in line with what other courts have afforded
23 defendants to propose a remedy following a determination that voting rights have been violated. (See,
24 e.g., *Williams v. City of Texarkana* (W.D. Ark. 1992) 861 F.Supp. 756, 767 [requiring the defendant to
25 submit its proposed remedy 16 days after finding Texarkana’s at-large elections violated the FVRA],
26 aff’d (8th Cir. 1994) 32 F.3d 1265; *Larios v. Cox* (N.D. Ga. 2004) 300 F.Supp.2d 1320, 1356–1357
27 [requiring the Georgia legislature to propose a satisfactory apportionment plan and seek Section 5
28 preclearance from the U.S. Attorney General within 19 days]; *Jauregui v. City of Palmdale*, No.
BC483039, 2013 WL 7018376 (Aug. 27, 2013) [scheduling remedies *hearing* for 24 days after the
court *mailed* its decision finding a violation of the CVRA]).

1 discussed at trial. Where a defendant fails to propose a remedy to a voting rights violation on the
2 schedule directed by the court, the court must provide a remedy without the defendant's input. (See
3 *Williams v. City of Texarkana* (8th Cir. 1994) 32 F.3d 1265, 1268 ["If [the] appropriate legislative body
4 does not propose a remedy, the district court must fashion a remedial plan."]; *Bone Shirt v. Hazeltine*
5 (D.S.D. 2005) 387 F.Supp.2d 1035, 1038 [same]).¹⁸

6 In order to eliminate the taint of the illegal at-large election system in this case, in a prompt and
7 orderly manner, a special election for all seven council seats is appropriate. Other courts have similarly
8 held that a special election is appropriate, where an election system is found to violate the FVRA. (See
9 *Neal v. Harris* (4th Cir. 1987) 837 F.2d 632, 632-634 ["[o]nce it was determined that plaintiffs were
10 entitled to relief under section 2, ... the timing of that relief was a matter within the discretion of the
11 court."]; *Ketchum v. City Council of Chicago* (N.D Ill. 1985) 630 F.Supp. 551, 564-566; *Bell v.*
12 *Southwell* (5th. Cir. 1967) 376 F.2d 659, 665 [voiding an unlawful election, prohibiting the winner of
13 that unlawful election from taking office, and ordering that a special election be held promptly];
14 *Coalition for Education in District One v. Board of Elections* (S.D.N.Y. 1974) 370 F.Supp. 42, 58,
15 aff'd (2nd Cir. 1974) 495 F.2d 1090; *Tucker v. Burford* (N.D. Miss. 1985) 603 F.Supp. 276, 279; *Arbor*
16 *Hill Concerned Citizens Neighborhood Ass'n v. County of Albany* (2d Cir. 2004) 357 F.3d 260, 262-63
17 [applauding the district court for ordering a special election]; *Montes v. City of Yakima* (E.D. Wash.
18 2015) 2015 WL 11120964, at p. 11, [explaining that a special election is often necessary to completely
19

20 ¹⁸ Defendant argues that section 10010 of the Elections Code constrains this Court's ability to adopt a
21 district plan without holding a series of public hearings. On the contrary, section 10010 speaks to what
22 a political subdivision must do (e.g. a series of public hearings) in order to adopt district elections or
23 propose a legislative plan remedy in a CVRA case, not what a court must do in completing its
24 responsibility under section 14029 of the Elections Code to implement appropriate remedies tailored to
25 remedy the violation. Defendant could have completed the process specified in section 10010 at any
26 time in the course of this case, which has been pending for nearly 3 years. Even if Defendant had
27 started the process of drawing districts only upon receiving this Court's November 8 Order (on
28 November 13), it could have held the initial public meetings required by section 10010(a)(1) by
November 19, and the additional public meetings the week of November 26, completing the process in
advance of its November 30 remedies brief. To this Court's knowledge, even at the time of the present
statement of decision, Defendant has failed to begin any remedial process of its own.

1 eliminate the stain of illegal elections]. As the Second District Court of Appeal held in *Jauregui*, “the
2 appropriate remedies language in section 14029 extends to [remedial] orders of the type approved
3 under the federal Voting Rights Act of 1965” (*Jauregui, supra*, at p. 807), so the logic of the courts for
4 ordering special elections in all of these cases is equally applicable in this case.

5 From the beginning of the nomination period to election day, takes a little less than four
6 months. ([https://www.smvote.org/uploadedFiles/SMVote/2016\(1\)/Election%20Calendar_website.pdf](https://www.smvote.org/uploadedFiles/SMVote/2016(1)/Election%20Calendar_website.pdf)).
7 Based on the path this Court has laid out, a final judgment in this case should be entered by no later
8 than March 1, 2019. Therefore, a special election – a district-based election pursuant to the seven-
9 district map (Tr. Ex. 261) – for all seven city council positions should be held on July 2, 2019. The
10 votes can be tabulated within 30 days of the election, and the winners can be seated on the Santa
11 Monica City Council at its first meeting in August 2019, so nobody who has not been elected through a
12 lawful election consistent with this decision may serve on the Santa Monica City Council past August
13 15, 2019. Only in that way can the stain of the unlawful discriminatory at-large election system be
14 promptly erased.

15 **IX. CONCLUSION.**

16 All Santa Monica residents deserve an equitable voice in their city government. Defendant’s at-
17 large election system denies some of its residents that right in a discriminatory fashion, and violates
18 both the CVRA and the Equal Protection Clause. Accordingly, this Court orders that, from the date of
19 judgment, Defendant is prohibited from imposing its at-large election system, and must implement
20 district-based elections for its city council in accordance with the seven-district map presented at trial
21 (Tr. Ex. 261).

22
23 Dated:

By:

Hon. Yvette M. Palazuelos
Los Angeles Superior Court Judge

PROOF OF SERVICE
1013A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 43364 10th Street West, Lancaster, California 93534.

On January 3, 2019, I served the foregoing document described as **[PROPOSED]** **STATEMENT OF DECISION** as follows:

***** See Attached Service List *****

☒ **BY MAIL as follows:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Lancaster, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE as follows:**

☐ I delivered such envelope by hand to the addressees at 111 North Hill Street, Los Angeles, CA 90012. _____

☐ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is Team Legal, Inc., 40015 Sierra Highway, Suite B220, Palmdale, CA 93550.

☐ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is First Legal Support Services, 1511 West Beverly Blvd., Los Angeles, CA 90026.

☐ **BY FACSIMILE as follows:** I served such document(s) by fax at See Service List to the fax number provided by each of the parties in this litigation at Lancaster, California. I received a confirmation sheet indicating said fax was transmitted completely.

☐ **BY GOLDEN STATE OVERNIGHT DELIVERY/OVERNIGHT MAIL as follows:** I placed such envelope in a Golden State Overnight Delivery Mailer addressed to the above party or parties at the above address(es), with delivery fees fully pre-paid for next-business-day delivery, and delivered it to a Federal Express pick-up driver before 4:00 p.m. on the stated date.

1 [] **BY ELECTRONIC SERVICE as follows:** Based on a court order, or an
2 agreement of the parties to accept service by electronic transmission, I caused the
3 documents to be sent to the persons at the electronic notification addressed listed
4 on the attached Service List.

5 Executed on January 3, 2019, at Lancaster, California.

6 X (State) I declare under penalty of perjury under the laws of the State of California
7 that the above is true and correct.

8 
9 Marci Cussimono

SERVICE LIST

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EXHIBIT H

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

PICO NEIGHBORHOOD ASSOCIATION; and
MARIA LOYA,

Plaintiffs,

v.

CITY OF SANTA MONICA,

Defendant.

CASE NO. BC616804

**DEFENDANT CITY OF SANTA
MONICA'S OBJECTIONS TO
PLAINTIFFS' PROPOSED STATEMENT
OF DECISION**

Complaint Filed: April 12, 2016
Trial Date: August 1, 2018

*Assigned to Judge Yvette Palazuelos
Dep't 28*

1 Defendant City of Santa Monica submits the following objections to plaintiffs' proposed state-
2 ment of decision (PSOD) under Code of Civil Procedure section 634 and rule 3.1590(g) of the Califor-
3 nia Rules of Court.

4 The City submits these objections to (i) avoid any claim of waiver on appeal; (ii) address any
5 ambiguity or factual error in the PSOD, and (iii) raise omitted principal controverted issues that the
6 City previously requested that the Court address in its PSOD.

7 **I. Introduction**

8 Santa Monica is a small, progressive community whose voting population is approximately
9 13% Latino. For more than a century, the City has used an at-large method to elect its City Council.
10 The community has repeatedly affirmed its choice of the at-large method because it permits all Santa
11 Monica voters to vote for seven City Councilmembers on a two-year cycle (rather than voting only for
12 one City Councilmember every four years); it makes all seven City Council members accountable to
13 all voters, not just those of a particular neighborhood, increasing the incentives for Councilmembers to
14 work together on issues of concern to the City as a whole; and it avoids drawing district lines with the
15 potential to pit neighborhood against neighborhood, encouraging legislative deal-making to serve the
16 interests of individual districts rather than the City as a whole.

17 Plaintiffs' PSOD would order the City to discard this system and replace it with district-based
18 elections using a seven-district map that has never been the subject of the public hearing process man-
19 dated by Elections Code section 10010. Neither the evidence presented at trial nor plaintiffs' PSOD
20 supports such an order.

21 First, contrary to plaintiffs' claim that voting is "racially polarized" in Santa Monica, the evi-
22 dence shows that white voters in Santa Monica regularly join with Latino voters in numbers sufficient
23 to elect Latino voters' candidates of choice. Between 2002 and 2016, candidates preferred by Latino
24 voters won at least 70% of the time in Santa Monica City Council races and over 80% of the time in
25 at-large elections for the SMMUSD, Community College, and Rent Control Boards that plaintiffs
26 claimed involved "racially polarized" voting. Under the at-large system, Latinos have held at least one
27 out of seven (14%) of the City Council seats since 2012 and currently hold four out of 19 (21%) of the
28

1 City's other at-large elected positions on the Rent Control, SMMUSD, and Community College
2 Boards. Indeed, at the time this lawsuit was filed, the City had a Mexican-American Mayor.

3 Second, plaintiffs' PSOD fails to demonstrate that a move to districts would generate better
4 outcomes for Santa Monica's Latino voters. It is impossible to draw a district in Santa Monica with a
5 voting population that is more than 30 percent Latino—far from a majority—and no court adjudicating
6 a vote-dilution claim has ever ordered the creation of districts where the citizen-voting-age population
7 of the relevant minority group in the purported remedial district would be this low. For good reason.
8 In Santa Monica, approximately two-thirds of Latinos live outside plaintiffs' proposed Pico district. In
9 a seven-district system, most of these Latino voters would be isolated in districts with overwhelmingly
10 white majorities and would be prevented from organizing together across neighborhoods, as they can
11 in the current at-large system. And plaintiffs do not dispute that district-based elections would dilute
12 the voting strength of African-Americans and Asians in Santa Monica.

13 Because there is no evidence establishing either that voting is "racially polarized" or that Santa
14 Monica's at-large election system has resulted in any dilution of Latino voting power, there is no basis
15 for finding a violation of either the California Voting Rights Act or California's Equal Protection
16 Clause.

17 Third, plaintiffs' PSOD attempts to make out a claim of "intentional discrimination" but fails
18 in this regard as well. In 1946, the transformation of the City's electoral system benefited minority
19 voters and garnered the vocal support of leaders of color within the community. With respect to the
20 1992 Charter Review Commission proceedings, plaintiffs' claim rests on a single statement by a single
21 Councilmember that plaintiffs have cherry-picked from lengthy recordings of proceedings and then
22 strained to misinterpret. Although the Charter Review Commission generally agreed that the City
23 should adopt a new electoral system, its members could not unite behind a single choice, and expressed
24 concerns about the drawbacks of all options considered, including districts. As for the Councilmember
25 who is plaintiffs' focus, he himself was in favor of adopting a new method of election, but expressed
26 concern about the parochialism inherent in any districted system. Plaintiffs twist his concern about
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1 ensuring that the City maintain its commitment to affordable housing into a public declaration of dis-
2 criminatory intent.

3 Fourth, plaintiffs' PSOD disregards the democratic process required by California's Election
4 Code for drawing district lines. Plaintiffs' proposed seven-district map was created by their hired ex-
5 pert with input from at most a few hand-selected community members who were not Latino and had
6 political interests well outside the bounds of this lawsuit. That map has never been the subject of the
7 public hearing process mandated by Elections Code section 10010.

8 For all these reasons, adopting plaintiffs' PSOD would disregard the facts and law to invalidly
9 usurp the voters' right to choose how their representatives are elected. And it would itself violate the
10 federal and state Constitutions, mandating a change to district-based elections for race-based reasons
11 without any compelling justification. This Court should seize on the last opportunity it has to avoid
12 these errors, reject plaintiffs' PSOD, reverse its tentative decision, and leave in place the voters' re-
13 peated choice of the at-large election method, which violates neither the CVRA nor the Equal Protec-
14 tion Clause.¹

15 **II. Principal Controverted Issues not Resolved by the PSOD**

16 In response to the Court's tentative decision, dated November 8, 2018, the City filed a request
17 for a statement of decision on November 15, 2018, and requested that the Court resolve in that state-
18 ment various principal controverted issues. (Code Civ. Proc., § 632; Rules of Court, rule 3.1590(d).)
19 The City filed a supplemental request for a statement of decision on December 12, 2018, in response
20 to the Court's first amended tentative decision, and requested that the Court resolve in its forthcoming
21 statement additional principal controverted issues.

22 Plaintiffs' PSOD does not resolve, or even address, most of the principal controverted issues
23 raised in the City's two requests for a statement of decision. Below, the City addresses each issue
24 raised in its request and notes whether it was addressed or resolved, correctly or incorrectly, by the
25 PSOD. In the interest of efficiency, the City reserves for its line-by-line objections below any detailed
26

27 ¹ To that end, attached as Exhibit A is the proposed verdict form that the City submitted along with its
28 closing briefing, filled out to conform to the evidence adduced at trial and the applicable law.

1 explanation as to why plaintiffs' proposed resolution of many key issues is incorrect.

2 **1. What are the elements of a claim under the California Voting Rights Act (CVRA)?**

- 3 a. Addressed, albeit erroneously, in the PSOD. Plaintiffs erroneously contend that
4 the CVRA requires only the operation of an at-large electoral system and a
5 showing of racially polarized voting, as they incorrectly define that term.

6 **2. What must a CVRA plaintiff prove in order to show racially polarized voting? Must**
7 **such a plaintiff satisfy the second and third preconditions from *Thornburg v. Gingles***
8 **(1986) 478 U.S. 30, 51, namely: (2) “the minority group must be able to show that it**
9 **is politically cohesive,” and (3) “the minority must be able to demonstrate that the**
10 **white majority votes sufficiently as a bloc to enable it—in the absence of special**
11 **circumstances, such as the minority candidate running unopposed [citation]—**
12 **usually to defeat the minority’s preferred candidate”?**

- 13 a. Addressed by the PSOD. The parties agree that a plaintiff must satisfy the
14 second and third *Gingles* preconditions. As discussed below, however, the
15 parties disagree as to what those preconditions require.

16 **3. Which City Council elections did the Court consider? What is the Court’s rationale**
17 **for considering those elections and not others?**

- 18 a. Addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly contend that
19 the Court should consider only those elections in which a Latino or Latino-
20 surnamed candidate ran. Plaintiffs also incorrectly apply their own standard,
21 disregarding at least the 2014 City Council election in which Zoe Muntaner, a
22 Latina with a Latina surname, was a candidate.

23 **4. Did the Court give some City Council elections more weight than others? If so, which**
24 **elections, and why?**

- 25 a. Partially addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly
26 would give no weight at all to elections in which no Latino or Latino-surnamed
27 candidate ran. Plaintiffs also incorrectly do not appear to give different weights
28

1 to elections in which Latino or Latino-surnamed candidates did run (e.g., by
2 giving more weight to more recent elections, or less weight to elections filed
3 after the lawsuit, as the CVRA requires), and do not explain their failure to do
4 so.

5 **5. *How did the Court determine which candidates were preferred by the voters of the***
6 ***relevant minority group (here, Latinos)?***

7 **a. *Must a candidate be Latino in order to be preferred by Latino voters, or is it***
8 ***the status of the candidate as the chosen representative of Latino voters, rather***
9 ***than the race of the candidate, that is relevant?***

10 i. Addressed, albeit erroneously and ambiguously, by the PSOD. Plaintiffs
11 incorrectly appear to suggest that only Latino or Latino-surnamed
12 candidates can be preferred by such voters. (They pay lip service to the
13 contrary notion, which is deeply embedded in the relevant federal case
14 law, but their analysis does not allow for the possibility that a non-Latino
15 might have been a preferred candidate of Latino voters in any election.)

16 **b. *If the race of the candidate does matter, which candidates did the Court find***
17 ***to be Latino for purposes of the CVRA? On what basis did the Court draw its***
18 ***conclusions concerning candidates' race and ethnicity? Did it take into***
19 ***account voter perceptions of candidates' race and ethnicity?***

20 i. Partially addressed, albeit erroneously, by the PSOD. Plaintiffs
21 incorrectly contend that voter perceptions alone matter, and that Gleam
22 Davis is not Latina because, according to a survey done by plaintiffs'
23 expert, voters do not recognize her as such.

24 **c. *Can Latino voters, who may cast up to three or four votes in a single election,***
25 ***prefer more than one candidate? If not, why not?***

26 i. Addressed, albeit erroneously and ambiguously, by the PSOD. Plaintiffs
27 pay lip service to the notion that "a minority group . . . in a multi-seat
28

plurality at-large election can prefer more than one candidate” (PSOD at p. 17), but nowhere account for that possibility in their analysis.

d. In each relevant election, how does the Court differentiate between candidates preferred by Latino voters and those not preferred by Latino voters?

i. Is the first step in identifying whether a candidate is Latino-preferred to determine which candidates would have won had Latinos been the only voters? If not, why not?

1. Addressed, albeit erroneously, by the PSOD. Plaintiffs appear to be of the incorrect view that the first step in identifying Latino-preferred candidates is determining which candidates have a Latino surname.

ii. If the Court differentiates Latino-preferred candidates from non-Latino-preferred candidates by determining that some candidates received “significantly higher” Latino voter support than others, how does it define “significantly higher”? For example, did Josefina Aranda receive “significantly higher” support from Latino voters in 2002 than Kevin McKeown?

1. Not addressed or resolved by the PSOD.

iii. Can a candidate be Latino-preferred if fewer than 50 percent of Latino voters vote for that candidate? If so, is there any numerical cutoff for voter preference or non-numerical method of differentiating preferred from non-preferred candidates?

1. Not addressed or resolved by the PSOD.

iv. In considering the differences in Latino and non-Latino voter support for candidates, did the Court consider that small differences between ecological-regression and ecological-inference estimates may not be meaningful in this case, because Santa Monica’s Latino population is

1 *now and always has been too small and too dispersed for statistical*
2 *techniques to produce point estimates as accurate as those in the*
3 *typical federal voting-rights case, where members of the minority*
4 *group necessarily would account for a majority of eligible voters in a*
5 *potential district?*

- 6 1. Addressed, albeit erroneously, by the PSOD. Plaintiffs contend
7 that weighted ecological regression is an accepted statistical
8 method in voting-rights cases, but incorrectly fail to consider that
9 those estimates are prone to uncertainty and error in estimating
10 Latino voter support in Santa Monica in ways that they are not in
11 the typical federal voting-rights case, where minority groups are,
12 of necessity, sufficiently numerous and compact to allow the
13 creation of a majority-minority district.

14 v. *In considering the differences in Latino and non-Latino voter support*
15 *for candidates, did the Court also consider that estimates produced by*
16 *ecological regression and ecological inference in this case may be*
17 *systematically less accurate or inaccurate?*

- 18 1. Addressed, albeit erroneously, by the PSOD. Plaintiffs contend
19 that weighted ecological regression is an accepted statistical
20 method in voting-rights cases, but incorrectly fail to consider that
21 those estimates are prone to uncertainty and error estimating
22 Latino voter support in Santa Monica in ways that they are not in
23 the typical federal voting-rights case, where minority groups are,
24 of necessity, sufficiently numerous and compact to allow creation
25 of a majority-minority district.

1 **6. *Who were the Latino-preferred candidates in each City Council election considered***
2 ***by the Court? In particular, who were the Latino-preferred candidates in each of the***
3 ***seven City Council elections analyzed by plaintiffs’ expert, Dr. J. Morgan Kousser?***

4 a. Ambiguously and erroneously addressed by the PSOD. Although it is not clear
5 from the PSOD, it appears that plaintiffs incorrectly suggest that all candidates
6 listed in the table appearing on page 10 of the PSOD (with the possible exception
7 of Gomez and Duron in 2012) were preferred by Latino voters, and that these
8 were the only candidates preferred by Latino voters.

9 **7. *Must white bloc voting cause a Latino-preferred candidate to lose in order for that***
10 ***candidate’s defeat to be part of a pattern of racially polarized voting? If not, why not?***
11 ***If so, in each of the City Council elections considered by the Court, how many Latino-***
12 ***preferred candidates lost, and how many did so because of white bloc voting? In***
13 ***particular, in each of the seven City Council elections analyzed by plaintiffs’ expert,***
14 ***Dr. J. Morgan Kousser, how many Latino-preferred candidates lost, and how many***
15 ***did so because of white bloc voting?***

16 a. Not addressed or resolved by the PSOD. Plaintiffs incorrectly ignore that Dr.
17 Kousser’s own data showed that of the 10 Latino-surnamed candidates he
18 examined, at most four were preferred by Latino voters but lost as the result of
19 white bloc voting (fewer than 50%). Plaintiffs also incorrectly ignore that of the
20 16 Latino-preferred candidates, both Latino-surnamed and non-Latino
21 surnamed, who ran in plaintiffs’ favored elections, Dr. Kousser’s data showed
22 that only 6 (37.5%) lost, and only 3 (18.75%) lost because of white bloc voting.
23 Plaintiffs thus ignore evidence showing that in City Council elections white
24 voters usually (well over 50% of the time) joined Latino voters in numbers
25 sufficient to enable the candidates preferred by Latino voters to prevail.

26
27 **8. *Did the Court consider the results of exogenous elections (e.g., School Board) or***
28 ***voting on ballot initiatives? If not, why not?*** [Addressed, albeit erroneously, by the

1 PSOD. Plaintiffs incorrectly contend that the results of exogenous elections reinforce a
2 conclusion of racial polarization, notwithstanding the fact that the candidates whom
3 they appear to identify as Latino-preferred almost always won these elections.] ***If so:***

4 ***a. Who were the Latino-preferred candidates in each exogenous election***
5 ***considered by the Court?***

6 i. Addressed ambiguously and erroneously by the PSOD. Plaintiffs again
7 incorrectly appear to suggest that a candidate is preferred by Latino
8 voters if he or she has a Latino surname. Plaintiffs do not address Latino
9 voter support for other candidates.

10 ***b. In each exogenous election considered by the Court, how many Latino-***
11 ***preferred candidates lost, and how many did so because of white bloc voting?***

12 i. Not addressed or resolved by the PSOD. Plaintiffs focus on 15
13 candidacies for exogenous elections for the Rent Control Board, School
14 Board, and College Board, but incorrectly ignore the fact that 13 of them
15 were successful. Plaintiffs thus ignore evidence showing that, as in City
16 Council elections, in exogenous elections, white voters usually (well
17 over 50% of the time) joined Latino voters in numbers sufficient to
18 enable the candidates preferred by Latino voters to prevail.

19 ***c. How much weight did the Court give exogenous elections in its analysis,***
20 ***relative to the weight given to City Council elections?***

21 i. Addressed ambiguously and erroneously by the PSOD. Plaintiffs
22 incorrectly appear to suggest that exogenous elections should be given
23 no weight at all, but then state, again incorrectly, that the results of
24 exogenous elections support their conclusion.

25 ***d. For each ballot initiative considered by the Court, what was the Latino-***
26 ***preferred outcome?***

27 i. Not addressed or resolved by the PSOD.
28

1 ***e. For each ballot initiative considered by the Court, did sufficient numbers of***
2 ***white voters join with Latino voters to enable the ballot initiative to garner a***
3 ***majority of votes within the City in favor of the Latino-preferred outcome?***

4 i. Not addressed or resolved by the PSOD. Plaintiffs incorrectly ignore
5 that the City’s white voters joined its Latino voters in sufficient numbers
6 to reject several racially charged propositions (Props. 187, 209, 227, and
7 54), even though three of these were approved statewide. Plaintiffs thus
8 ignore evidence showing that, as in City Council, Rent Control Board,
9 School Board, and College Board elections, with respect to ballot
10 initiatives, white voters usually (well over 50% of the time) joined Latino
11 voters in numbers sufficient to enable the positions preferred by Latino
12 voters to prevail.

13 ***9. Did plaintiffs prove that Latino voters in Santa Monica cohesively prefer certain***
14 ***candidates?***

15 a. Addressed, and resolved, albeit erroneously, by the PSOD. The PSOD states
16 correctly that a “minority group is politically cohesive where it supports its
17 preferred choices to a significantly greater degree than the majority group
18 supports those same choices.” Plaintiffs, however, misapply this standard by
19 incorrectly focusing only on elections involving Latino or Latino-surnamed
20 candidates and considering only such candidates to be preferred by Latino
21 voters.

22 ***10. Did plaintiffs prove that the white majority in Santa Monica votes sufficiently as a***
23 ***bloc to—in the absence of special circumstances—usually defeat candidates***
24 ***cohesively preferred by Latino voters? [Not addressed or resolved by the PSOD.] If***
25 ***so, how?***

26 a. ***How did the Court define the word “usually,” as it is used in Thornburg v.***
27 ***Gingles?***

i. Not addressed or resolved by the PSOD.

b. What fraction reflects the Court’s conclusion on this issue? In other words, which losing Latino-preferred candidates defeated by white bloc voting are in the numerator, and which Latino-preferred candidates are in the denominator?

i. Addressed, albeit ambiguously and erroneously, by the PSOD. Plaintiffs appear to state, in the table appearing on page 10 of the PSOD, that voting for certain Latino-surnamed candidates was polarized, and that certain of those candidates lost. Plaintiffs do not address whether losing candidates were defeated by white bloc voting. As discussed above, Plaintiffs incorrectly ignore that Dr. Kousser’s own data showed that of the 10 Latino-surnamed candidates he examined, at most four were preferred by Latino voters but lost as the result of white-bloc voting (fewer than 50%). Plaintiffs also incorrectly ignore that of the 16 Latino-preferred candidates, both Latino-surnamed and non-Latino surnamed, who ran in plaintiffs’ favored elections, Dr. Kousser’s data showed that only 6 (37.5%) lost, and only 3 (18.75%) lost because of white bloc voting. Plaintiffs thus ignore evidence showing that in City Council elections white voters usually (well over 50% of the time) joined Latino voters in numbers sufficient to enable the candidates preferred by Latino voters to prevail.

c. Did the Court conclude that Oscar de la Torre’s deliberate attempt to lose the 2016 City Council election after his wife filed this lawsuit amounted to a “special circumstance”?

i. Addressed, albeit erroneously, by the PSOD. Plaintiffs assert, incorrectly, that no evidence supports the conclusion that de la Torre deliberately lost the election, ignoring evidence the de la Torre

1 conducted this election far differently from his prior successful
2 campaigns for School Board, choosing not to seek endorsements,
3 establish a campaign committee, or engage in any significant
4 fundraising.

- 5 11. ***Must a CVRA plaintiff prove vote dilution by showing that voters in the relevant***
6 ***minority group would have a greater opportunity to elect candidates of their choice***
7 ***under an alternative electoral system?*** [Addressed, but not resolved, by the PSOD.
8 Plaintiffs incorrectly appear to suggest that vote dilution is not a requirement, but then
9 contend that they have proven the existence of vote dilution in any event.]

10 ***a. If so, against what objective and workable benchmark did the Court measure***
11 ***actual Latino voting strength?***

- 12 i. Not addressed or resolved by the PSOD. Plaintiffs incorrectly assert that
13 dilution is not a separate element of a CVRA violation distinct from
14 racially polarized voting. Plaintiffs then assert, in a single sentence,
15 without explanation, that they “presented several available remedies
16 (district-based elections, cumulative voting, limited voting and ranked
17 choice voting), each of which would enhance Latino voting power over
18 the current at-large system.”

19 ***b. Did plaintiffs prove vote dilution through Mr. Ely’s estimate of vote totals in***
20 ***the hypothetical Pico District?***

- 21 i. Addressed in passing and not resolved by the PSOD. Plaintiffs assert in
22 a single sentence, without explanation, that district-based elections
23 “would enhance Latino voting power over the current at-large system.”

24 ***c. Did plaintiffs prove vote dilution through Mr. Levitt’s opinions concerning***
25 ***alternative at-large electoral schemes?*** [Addressed in passing and not resolved
26 by the PSOD. Plaintiffs assert in a single sentence, without explanation, that
27 alternative at-large electoral schemes “would enhance Latino voting power over
28

the current at-large system.”] *If so, did the Court consider historical levels of Latino voter cohesion or turnout?* [Not addressed or resolved by the PSOD.] *Or did the Court estimate actual Latino voter turnout in order to determine whether Latino voters’ share of actual voters would exceed the threshold of exclusion under a destaggered alternative at-large electoral scheme?* [Not addressed or resolved by the PSOD.]

12. *Under what circumstances are the factors enumerated in Elections Code section 14028(e) relevant?* [Not addressed or resolved by the PSOD, which asserts that these factors support a finding of racially polarized voting in Santa Monica and a violation of the CVRA, but does not define the circumstances that render these factors relevant in this case.]

a. Were those factors part of the Court’s analysis of liability under the CVRA?

i. Addressed, albeit ambiguously, by the PSOD. Plaintiffs contend that the qualitative factors set out in section 14028(e) support a finding of liability, but do not explain what weight, if any, the Court should give them.

b. If so, what were the specific factors considered by the Court, and what factual findings did the Court make relating to those factors?

i. Addressed, albeit erroneously, by the PSOD, which recites several factors and proposes (incorrect) factual findings.

c. What causal connection, if any, did the Court find between (i) any factors considered by the Court and (ii) vote dilution?

i. Not addressed or resolved by the PSOD.

13. *Did plaintiffs prove that Santa Monica’s method of election has caused a disparate impact on minority voters?* [Not addressed or resolved by the PSOD. Plaintiffs incorrectly appear to suggest that to prove their Equal Protection claim they are required to show only discriminatory intent.]

1 ***a. Were plaintiffs required to prove, for purposes of their Equal Protection claim,***
2 ***that minority voters would have a greater electoral opportunity under some***
3 ***other electoral system?***

4 i. Not addressed or resolved by the PSOD. Plaintiffs incorrectly appear to
5 suggest that to prove their Equal Protection claim they are required to
6 show only discriminatory intent.

7 ***b. When did the minority populations in Santa Monica become large and***
8 ***concentrated enough that an alternative electoral system could have enhanced***
9 ***minority voting strength? Which system(s), specifically, would have done so?***

10 i. Not addressed or resolved by the PSOD.

11 ***c. Did the 1946 Charter amendment—which put in place the system under which***
12 ***seven City Council members are elected at-large in staggered elections, and***
13 ***which eliminated designated posts—strengthen or weaken minority voting***
14 ***power?***

15 i. Not addressed or resolved by the PSOD. Plaintiffs introduced no
16 evidence showing that the 1946 Charter would weaken minority voting
17 power; to the contrary, unrebutted evidence demonstrated that the
18 Charter could only have enhanced minority voting power.

19 14. ***Did plaintiffs prove that the relevant decisionmakers affirmatively intended to***
20 ***discriminate against minority voters by adopting and maintaining the current at-large***
21 ***electoral system?*** [Resolved, albeit erroneously, by the PSOD. Plaintiffs conclude,
22 incorrectly, that there is evidence of intentional discrimination in both 1946 and in
23 1992.] ***If so, what were the relevant decisions, who were the relevant decisionmakers,***
24 ***and what evidence did plaintiffs present showing that those decisionmakers intended***
25 ***to discriminate?*** [Resolved, albeit erroneously, by the PSOD. Plaintiffs incorrectly
26 contend that the Board of Freeholders discriminated in 1946 and that the City Council
27 discriminated in 1992. Plaintiffs purport to identify evidence supporting these
28

conclusions. As discussed in the detailed objections below, however, the evidence demonstrates that there was no such discrimination.]

a. Did the Court find intentional discrimination relative to Santa Monica's election system at any point before 1946? If so, on which events, statements, or other facts did the Court rely?

i. Not addressed or resolved by the PSOD. The PSOD does not propose, and there is no evidence to support, a finding of intentional discrimination as to events predating 1946.

b. Did the Court find intentional discrimination relative to Santa Monica's 1946 Charter amendment? If so, on which events, statements, or other facts did the Court rely?

i. Addressed, albeit erroneously, by the PSOD. Plaintiffs have purported to identify evidence supporting discrimination on the part of the Freeholders in 1946. As discussed in the detailed objections below, however, the evidence demonstrates that there was no such discrimination.

c. Did the Court find intentional discrimination relative to Santa Monica voters' rejection of Proposition 3 in 1975? If so, on which events, statements, or other facts did the Court rely?

i. Not addressed or resolved by the PSOD. The PSOD does not propose, and there is no evidence to support, a finding of intentional discrimination as to events in 1975.

d. Did the Court find intentional discrimination relative to Santa Monica's rejection of district elections in 1992? If so, on which events, statements, or other facts did the Court rely? [Resolved, albeit erroneously, by the PSOD. Plaintiffs have purported to identify evidence supporting discrimination on the part of City Councilmembers in 1992. As discussed in the detailed objections

1 below, however, the evidence demonstrates that there was no such
2 discrimination.]

3 ***i. If the Court found an affirmative intent to discriminate in 1992, is it***
4 ***premising that finding on what was said or decided at the 1992 Council***
5 ***meeting concerning the City’s electoral system? If so, what specific***
6 ***statements or decisions support the Court’s conclusion?***

7 1. Addressed, albeit erroneously, by the PSOD. Plaintiffs rely
8 exclusively on statements made at the City Council meeting in
9 1992 and focus particularly on the remarks of Councilmember
10 Zane. As discussed in the detailed objections below, however,
11 Councilmember Zane’s statements demonstrate no
12 discriminatory intent. To the contrary, Councilmember Zane’s
13 comments reflect his desire to craft an election system that would
14 result in strong representation for both the Pico neighborhood and
15 the City’s minority residents.

16 ***ii. Has the Court found that any councilmembers intended to weaken***
17 ***minority voting strength in order to preserve their seats, as was found***
18 ***in Garza v. County of Los Angeles? If so, which councilmember(s)?***

19 1. Addressed, albeit erroneously and ambiguously, by the PSOD.
20 Plaintiffs appear to suggest that Councilmember Zane voted the
21 way he did not in order to preserve his seat, but in order to
22 “maintain the power of his political group to continue dumping
23 affordable housing in the Latino-concentrated [Pico]
24 neighborhood despite their opposition.” What political group
25 plaintiffs are referring to is unclear; they previously argued that
26 the relevant “political group” was Santa Monica’s for Renters’
27 Rights, but the PSOD nowhere mentions that group, which the
28

evidence showed has repeatedly backed Latino and other minority candidates, as well as candidates who have advocated for a change to district-based elections and was at the time co-chaired by the Chair of the Charter Review Commission that tentatively recommended a change in the election system. It is unclear whether plaintiffs contend that members of the Council other than Councilmember Zane behaved in a discriminatory way. In any event, as discussed in the detailed objections below, the evidence demonstrates that no Councilmember acted with the intent to weaken minority voting strength.

e. Did the Court find intentional discrimination relative to Santa Monica voters' rejection of Measure HH in 2002? If so, on which events, statements, or other facts did the Court rely?

i. Not addressed or resolved by the PSOD. The PSOD does not propose, and there is no evidence to support, a finding of intentional discrimination as to events in 2002.

f. Did the Court find intentional discrimination relative to Santa Monica's election system at any point after 2002? If so, on which events, statements, or other facts did the Court rely?

i. Not addressed or resolved by the PSOD. The PSOD does not propose, and there is no evidence to support, a finding of intentional discrimination as to any events after 2002.

15. Did the Court make findings under the five-factor framework set out in the United States Supreme Court's decision in *Village of Arlington Heights v. Metropolitan Housing Development Corporation* (1977) 429 U.S. 252? If so, what specific findings did the Court make and what evidence supports those findings?

a. Addressed, albeit erroneously, by the PSOD. Plaintiffs do purport to follow the

Arlington Heights framework, and purport to identify evidence supporting their theory of intentional discrimination. As discussed in the detailed objections below, however, correctly analyzed under the *Arlington Heights* framework, the evidence demonstrates that there was no discriminatory intent.

16. *In assessing whether the City’s at-large electoral system was adopted or maintained with a discriminatory purpose, and whether the system has had a disparate impact on minority voters, did the Court consider the legitimate, non-discriminatory purposes of the City’s at-large electoral system, including but not limited to (i) ensuring that all councilmembers focus on all issues citywide, rather than only those issues facing their particular districts; (ii) giving every voter a say concerning all seven Council seats, not just one; and (iii) affording voters the opportunity to vote for Council seats every two years, not every four years?*

a. Not addressed or resolved by the PSOD.

17. *In determining that district-based elections should be ordered as a remedy, did the Court resolve the following questions identified in Sanchez v. City of Modesto (2006) 145 Cal.App.4th 660, 690, as issues not yet resolved by the Courts of Appeal, and, if so, how:*

a. *“Is the court precluded from employing crossover or coalition districts (i.e., districts in which the plaintiffs’ protected class does not comprise a majority of voters) as a remedy?”*

i. Addressed, albeit erroneously, by the PSOD. Plaintiffs assert that Latino voters need not make up a majority of the citizen-voting-age population in any purportedly remedial district, but do not consider the constitutional problems resulting from that assertion. As discussed in the detailed objections below, plaintiffs have failed to show that the at-large election system results in any Latino vote dilution that could be remedied

by any districting plan, including plaintiffs’ proposal, in which no district’s voting population is more than 30% Latino; as a result, there is no compelling interest that would support ordering either a move to district-based elections or the drawing of a particular district to maximize its percentage of Latino voters.

b. Does the Court’s order to move to district-based elections “conform to the Supreme Court’s vote-dilution-remedy cases?”

i. Addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly argue that their proposal complies with *Shaw v. Reno* and related case law.

18. In determining that district-based elections should be ordered as a remedy, did the Court consider the undisputed fact that in Santa Monica, Latinos are not geographically compact or concentrated, with the result being that no district can be drawn in which Latinos constitute a majority of the citizen-voting-age population (“CVAP”), as permitted by California Elections Code § 14028(c)? If not, why not? If so, how did this factor into the Court’s choice of remedy?

a. Not addressed or resolved by the PSOD.

19. What compelling interest supports the Court’s determination to order a district (the Pico Neighborhood District, Ex. 162-1) drawn to maximize that district’s percentage of Latino voters?² [Addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly contend that they need not identify a compelling interest because the rational basis test applies. Plaintiffs also incorrectly contend that even if a compelling interest is required, they have shown one. As discussed in the detailed objections below, a compelling interest is required both because the order to move to district-based elections is based

² The City’s supplemental request for a statement of decision was filed after the Court’s amended tentative decision, which mandated the drawing only of a single district, the Pico Neighborhood District, in accordance with the map in Ex. 162. Subsequently, at a hearing conducted on January 2, 2019, the Court changed its mind and indicated its intent to mandate the drawing of all seven districts in accordance with the map in Ex. 261. The issues below were raised in the supplemental request for a statement of decision in connection with the map in Ex. 162, but apply in the same way to the map in Ex. 261.

solely on racial considerations and because the Pico Neighborhood District (District 1 in Ex. 261) was drawn to maximize its percentage of Latino voters. Moreover, as discussed in the detailed objections below, there is no compelling interest because plaintiffs have failed to show that the at-large election system results in any Latino vote dilution or that Latino voting strength would be increased under a districting plan in which the Latino voting share of the voting population does not exceed 30 percent in any district.]

a. In determining whether there is any such compelling interest, did the Court consider that Latinos will not constitute a majority of the CVAP within the Pico Neighborhood District? If not, why not? If so, how did this factor into the Court's determination?

i. Not addressed or resolved by the PSOD.

b. In determining whether there is any such compelling interest, did the Court consider that the analysis of plaintiffs' own expert confirmed that Latinos do not vote cohesively with other minority groups in Santa Monica, the result being that Latino voters in the Pico Neighborhood District will still require substantial crossover voting from white voters to elect candidates of their choice? If not, why not? If so, how did this factor into the Court's determination?

i. Not addressed or resolved in the PSOD.

c. In determining whether there is any such compelling interest, did the Court consider the Supreme Court's plurality decision in Bartlett v. Strickland (2009) 556 U.S. 1, which held that Section 2 of the federal Voting Rights Act cannot mandate the formation of influence districts? If not, why not? If so, how did this factor into the Court's consideration?

i. Not addressed or resolved in the PSOD.

20. *If the Court found that a compelling interest supports the remedy here, did the Court find that the chosen remedy was narrowly tailored to serve that compelling interest?*

If not, why? If so, how?

- a. Addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly contend that they need not identify a compelling interest or demonstrate narrow tailoring because the rational basis test applies. Plaintiffs also incorrectly contend that even if a compelling interest is required, they have shown one. As discussed in the detailed objections below, a compelling interest is required both because the order to move to district-based elections is based solely on racial considerations and because the Pico Neighborhood District (District 1 in Ex. 261) was drawn to maximize its percentage of Latino voters. Moreover, as discussed in the detailed objections below, there is no compelling interest because plaintiffs have failed to show that the at-large election system results in any Latino vote dilution that could be remedied by any districting plan, including plaintiffs' proposed district, in which the voting population is 30% Latino.

21. If there is no compelling interest supporting the Court's determination to order a move to district-based elections, what justifies the order and how does it conform to the Supreme Court's requirements in vote-dilution remedy cases, given that the only conceivable basis for the ordered change in the City's election system would be to attempt to enhance Latino voting power?

- a. Addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly contend that the rational basis test applies to the CVRA, and that this case does not implicate *Shaw v. Reno* and related case law.

22. In determining that district-based elections should be ordered as a remedy, did the Court consider that the majority of Latino voters in Santa Monica will be in districts other than the Pico Neighborhood District? If not, why not? If so, how did this factor into the Court's determination? [Not addressed or resolved by the PSOD.]

- a. ***Did the Court consider that the majority of Latino voters in districts other than the Pico Neighborhood District will, unlike under the current at-large election***

1 *system, be unable to join with Latino voters outside their own districts, includ-*
2 *ing the Pico Neighborhood District, to elect City Council candidates of their*
3 *choice? If not, why not? If so, how did this factor into the Court’s determi-*
4 *nation?*

5 i. Not addressed or resolved by the PSOD.

6 *b. Did the Court consider that in most districts other than the Pico Neighborhood*
7 *District, the percentage of Latino voters within the district will be less than the*
8 *approximately 13.6% of CVAP that Latino voters currently constitute in Santa*
9 *Monica as a whole? If not, why not? If so, how did this factor into the Court’s*
10 *determination?*

11 i. Not addressed or resolved by the PSOD.

12 **23. *In determining that district-based elections should be ordered as a remedy, did the***
13 ***Court consider the effect of district-based elections on other minority groups in Santa***
14 ***Monica—namely, African Americans and Asians? If not, why not? If so, how did***
15 ***this factor into the Court’s determination?***

16 a. Not addressed or resolved by the PSOD.

17 **24. *Does the Pico Neighborhood District (Ex. 162-1) serve to remedy the violations found***
18 ***by the Court? If so, how?***

19 a. Addressed, albeit erroneously and ambiguously, by the PSOD. Plaintiffs assert
20 that the Pico Neighborhood District (District 1 in Ex. 261) would be remedial
21 but fail to explain how.

22 **25. *In ordering the City’s district-based elections to be “in accordance” with the map***
23 ***identifying the Pico Neighborhood District, did the Court consider the effect of that***
24 ***district on other minority groups in Santa Monica—namely, African Americans and***
25 ***Asians? If not, why not? If so, how did this factor into the Court’s determination?***

26 a. Not addressed or resolved by the PSOD.

27 **26. *Section 10010 of the Elections Code requires a political subdivision to, among other***
28

1 *things, hold a series of public meetings and receive public input concerning proposed*
2 *district maps, in the event that a court imposes a change from at-large elections to*
3 *district elections. Did the Court find that the Pico Neighborhood District drawn by*
4 *plaintiffs' expert and identified in Exhibit 162-1 was drawn in accordance with sec-*
5 *tion 10010?* [Not addressed or resolved by the PSOD. Plaintiffs appear to concede that
6 the seven-district map tentatively ordered by the Court (Ex. 261) was not drawn in ac-
7 cordance with section 10010. Plaintiffs incorrectly appear to argue that section 10010
8 has no application to the "Court's ability to adopt a district plan without holding a series
9 of public hearings." Plaintiffs ignore section 10010(c), which states that the statute ap-
10 plies to "a proposal that is required due to a court-imposed change from an at-large
11 method of election to a district-based election."]

12 a. *If so, how?* [Not applicable.]

13 b. *If not, did the Court find that there is an exception to section 10010 that ap-*
14 *plies here? What is that exception, and on what basis did the Court find it*
15 *applicable here?*

16 i. Not addressed or resolved by the PSOD.

17 27. *With respect to determining the remaining districts for City Council elections going*
18 *forward, does the Court order the City to comply with Elections Code section 10010?*
19 *If not, why not?*

20 a. Not applicable given the Court's tentative order that the City must adopt plain-
21 tiffs' seven-district map. Plaintiffs incorrectly appear to argue that section
22 10010 has no application to the "Court's ability to adopt a district plan without
23 holding a series of public hearings." Plaintiffs ignore section 10010(c), which
24 states that the section applies to "a proposal that is required due to a court-im-
25 posed change from an at-large method of election to a district-based election."

26 **III. General Objections to PSOD**

27 *Lack of record citations.* Plaintiffs do not cite trial or hearing transcripts or any exhibits (with
28

1 the exception of Exhibit 261) in their PSOD. Such citations would enable the City to respond to all
2 purported factual findings with the requisite particularity, and would allow the Court determine whether
3 those purported findings are adequately supported by the record. Record citations would also facilitate
4 appellate review. The City therefore objects to plaintiffs’ failure to cite the record, which serves to
5 conceal the infirmity of their positions.

6 ***Legal conclusions delivered by experts.*** Because the PSOD lacks citations, it is difficult to
7 discern the basis of many of its purported factual findings. The City objects to any such findings to the
8 extent that they depend on legal conclusions delivered by plaintiffs’ experts.

9 Courts must exclude, inter alia, expert testimony concerning “issues of law or . . . legal conclu-
10 sions.” (*Nevarrez v. San Marino Skilled Nursing and Wellness Centre* (2013) 221 Cal.App.4th 102,
11 122.) Although the Court did not exclude plaintiffs’ experts’ opinions, it ought to disregard them now
12 to the extent that they do not conform to this longstanding rule.

13 The Court should also disregard Dr. Kousser’s extensive commentary about the meaning of
14 federal voting-rights statutes and decisions, as such testimony violated the basic principle prohibiting
15 expert opinions on legal issues. (*Summers, supra*, 69 Cal.App.4th at pp. 1160, 1181.) Dr. Kousser’s
16 homemade legal analysis threatens to usurp not just the Court’s role as factfinder, but also its role as
17 judge. It is judges, not experts, who have the responsibility to say what the law is and to apply the law
18 to the facts. (See, e.g., *Summers, supra*, 69 Cal.App.4th at pp. 1160, 1181 [“Both state and federal
19 courts have held that expert testimony on issues of law is not admissible. . . . The reason is that the
20 [expert] who expounds on the law usurps the role of the trial court.”]; see also *Nieves-Villanueva v.*
21 *Soto-Rivera* (1st Cir. 1997) 133 F.3d 92, 99 [at least eight federal circuit courts prohibit testimony on
22 “applicable principles of law”].)

23 The Court should disregard not just Dr. Kousser’s purported synthesis of the law, but also his
24 application of that law to the facts of this case, which is equally within the exclusive province of the
25 Court. (See, e.g., *Nevarrez, supra*, 221 Cal.App.4th at p. 122 [“an expert may not testify about issues
26 of law or draw legal conclusions”]; *Ferreira v. Workmen’s Comp. Appeals Bd.* (1974) 38 Cal.App.3d
27 120, 126 [“The manner in which the law should apply to particular facts is a legal question and is not
28

subject to expert opinion.”]; see also *Terrebonne Parish NAACP v. Jindal* (M.D.La. Oct. 20, 2015, No. 14-069-JJB-SCR) 2015 WL 6157912, at *3 [excluding expert report and testimony because they “read like a judicial opinion, setting forth the relevant legal standards and applying the evidence in this case to argue that Plaintiffs’ claims fail”].)

Indeed, Dr. Kousser was impeached countless times during the trial—his bias, inconsistencies, and ever-changing positions demonstrate that his conclusions should be given little weight, particularly since his actual data demonstrate that there is no racially polarized voting or vote dilution in Santa Monica elections.

Experts serving as a conduit for inadmissible hearsay. Under the landmark case *People v. Sanchez* (2016) 63 Cal.4th 665, an expert “cannot . . . relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception.” (*Id.* at p. 686.)³ Dr. Kousser repeatedly ran afoul of this rule at trial, including, for example, by relying on an unsworn, unsigned, and manifestly unreliable statement purportedly from former Councilmember Robert Holbrook (Ex. 145).

IV. Specific Objections to the PSOD

Subject to and without waiving the General Objections above, the City asserts its objections to specific propositions of law and purported findings of fact in the table below. The objectionable portions of the PSOD are identified by “Section” and listed in the left-hand column of the table (e.g., the first is 1:18-20, which indicates that the objectionable portion is page 1, lines 18 through 20 of the PSOD), and the City’s specific objections and responses are listed in the right-hand column.

Section I: Summary (page 1, lines 1-16)

Objectionable portion of PSOD	Specific objections/responses
1:7-8	Following the Court’s issuance of its Amended Tentative Decision, the City filed a supplemental request for a statement of decision.

³ This rule applies to civil as well as criminal cases. (See, e.g., *People v. Bona* (2017) 15 Cal.App.5th 511, 520 [“Although *Sanchez* is a criminal case, it also applies to civil cases, such as this one, to the extent it addresses the admissibility of expert testimony under Evidence Code sections 801 and 802.”]; *Conservatorship of K.W.* (2017) 13 Cal.App.5th 1274, 1282 [“*Sanchez* is not, however, limited in its application to criminal proceedings.”]; *People ex rel. Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 10 [“This aspect of *Sanchez* concerning state evidentiary rules for expert testimony (Evid. Code, §§ 801-802) applies in civil cases such as this nuisance lawsuit.”].)

1 **Section II: The California Voting Rights Act (page 1, line 17 through page 5, line 6)**

2 The California Voting Rights Act (CVRA) is a state-level counterpart to Section 2 of the federal
3 Voting Rights Act. Like Section 2, the CVRA does not presume that at-large elections are unlawful.
4 Plaintiffs must prove as much by satisfying each and every element of the statute. Exactly what those
5 elements are, however, has yet to be clarified by any court; in fact, one of only three published appellate
6 decisions on the CVRA expressly declined to decide what a plaintiff must prove in order to prevail on
7 a CVRA claim. (*Sanchez v. City of Modesto* (2006) 145 Cal. App. 4th 660, 690.) Nevertheless, the
8 statute itself, in combination with the federal case law from which it borrows, makes plain that there
9 are two key elements: legally significant racially polarized voting and vote dilution.

10 Voting is “racially polarized” where the relevant minority group and the white majority vote in
11 statistically significant different ways. Such racial polarization is not legally significant unless white
12 bloc voting usually causes minority-preferred candidates to lose.

13 Identifying minority-preferred candidates is a complex exercise, particularly where, as here, the
14 municipality runs multi-seat elections—that is, where voters vote for more than one candidate in each
15 election. It is difficult to discern racial voting preferences, if any, from a pile of secret ballots in which
16 voters have each voted for between zero and four candidates and indicated neither their race/ethnicity
17 nor their order of preference for various candidates. There is an especially high degree of uncertainty
18 where, as here, minority groups are relatively small and integrated throughout the City. Even if there
19 were no such uncertainty, the parties would still disagree about how to identify the candidates preferred
20 by minority voters—in this case, Latinos.

21 Plaintiffs proceed from the erroneous assumptions that the only elections that matter are those
22 in which Latino (or Latino-surnamed) candidates ran, and that the only candidates who could possibly
23 be Latino-preferred must themselves be Latino. (Plaintiffs pay lip service to the possibility that Latino-
24 preferred candidates might be non-Latino, but nowhere account for that possibility in their analysis.)
25 The City has maintained from the start of this case that these assumptions, particularly the assumption
26 that voters will necessarily prefer candidates of their own race or ethnicity, are unreasonable and un-
27 constitutional. As one court put it, “[t]o acquiesce in such a presumption would be not merely to resign
28

1 ourselves to, but to place the imprimatur of law behind, a segregated political system.” (*Lewis v. Ala-*
2 *mance Cty., N.C.* (4th Cir. 1996) 99 F.3d 600, 607.)

3 Accordingly, the Court should apply a three-step process for identifying Latino-preferred can-
4 didates that is rooted in federal case law. First, the Court should determine which candidates would
5 have won had Latinos been the only voters. Second, because there may be major differences in the
6 level of Latino support for those candidates, the Court should determine whether any of these candi-
7 dates received significantly higher support from Latinos than the others (and disregard any candidates
8 who received significantly lower support). Third and finally, if any of the remaining candidates were
9 supported by fewer than half of Latino voters, they, too, should be disregarded. Only through this
10 comprehensive process, rather than through plaintiffs’ bleak and narrow-minded conception of voting
11 patterns, can one identify the candidates preferred by Santa Monica’s Latino voters, many (but not all)
12 of whom happened to be Latino.

13 Plaintiffs assert that racially polarized voting (at least as they incorrectly define it) is the only
14 element of the statute. But there is another element set forth in the plain text of the statute: vote
15 dilution. A CVRA plaintiff must prove that a minority group has suffered a diminution of its voting
16 power caused by an at-large electoral system. A simple illustration demonstrates why. Suppose that,
17 in a hypothetical city, a small minority group—perhaps 1,000 people—were highly concentrated in a
18 single voting precinct. Experts like those hired by plaintiffs and the City would have no difficulty in
19 such a case determining the voting preferences of the group. Suppose further that in every election,
20 the minority group votes cohesively for a single candidate, and that, in every election, that candidate
21 loses because he or she receives scarcely any support from white voters. Under those circumstances,
22 the voting could be deemed racially polarized, and the polarization could be deemed legally significant
23 because it has usually caused the defeat of the minority-preferred candidate. But there nevertheless
24 could be no liability, because there would be no hypothetical alternative system in which the small
25 minority group would be sufficiently powerful to elect candidates of its choice. In a districted system,
26 for example, the minority group would command nothing close to a majority of eligible voters, and so
27 it would be just as unable to elect a candidate of its choice as under the challenged system.

Because voting can be “racially polarized,” but have no effect on the outcome of an election, racial polarization cannot be the sole touchstone of the liability analysis. There must be some remediable injury. Federal courts have satisfied this requirement by demanding evidence in every Section 2 case that it is possible to draw a constitutionally permissible majority-minority district. Although the CVRA has been interpreted to abandon this requirement (at least with respect to liability), it cannot reasonably be interpreted to have abandoned any requirement of injury in the form of vote dilution. Indeed,, as one of plaintiffs’ own experts conceded, if there are no circumstances under which the minority group would have greater electoral power, then there can be no liability under the CVRA.

Objectionable portion of PSOD	Objections/responses
1:18-20	The CVRA does not disfavor at-large election systems. To be sure, a public entity can be liable under the CVRA only if it relies on an at-large method of election, but the statute requires a plaintiff to prove that the electoral system at issue has resulted in vote dilution.
2:7–3:11	<p>Incomplete recitation of the elements of the CVRA. Plaintiffs omit vote dilution, which is required by the statute in Section 14027, which must be given independent meaning. A public entity violates the CVRA only if its at-large method of election “<i>impairs</i> the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, <i>as a result of the dilution</i> or the abridgment of the rights of voters who are members of a protected class.” (§ 14027, italics added.) Courts interpreting similar language in § 2 of the FVRA require proof of <i>harm</i> (vote dilution) and <i>causation</i> (a connection between the harm and the electoral system). (E.g., <i>Gingles</i>, 478 U.S. at 48, fn. 15; <i>Gonzalez v. Ariz.</i> (9th Cir. 2012) 677 F.3d 383, 405; <i>Aldasoro v. Kennerson</i> (S.D.Cal. 1995) 922 F.Supp. 339, 369, fn. 10.) California courts have stated, but not yet held, that the CVRA similarly demands proof of vote dilution caused by an election system. (<i>Rey v. Madera Unified Sch. Dist.</i> (2012) 203 Cal.App.4th 1223, 1229; <i>Jauregui v. City of Palmdale</i> (2014) 226 Cal.App.4th 781, 802; <i>Sanchez v. City of Modesto</i> (2006) 145 Cal.App.4th 660, 666.)</p> <p>To prove vote dilution, a plaintiff must show that a protected class would have greater opportunity to elect candidates of its choice under some other electoral system, which serves as a “benchmark” for comparison. (See, e.g., <i>Reno v. Bossier Parish Sch. Bd.</i> (1997) 520 U.S. 471, 480; <i>Holder v. Hall</i> (1994) 512 U.S. 874, 880 (plurality)⁴; <i>Gingles</i>, 478 U.S. at 50, fn.</p>

⁴ The Court in *Hall* further explained that, “[i]n certain cases, the benchmark for comparison in a § 2 dilution suit is obvious. . . . But where there is *no objective and workable standard* for choosing a reasonable benchmark by which to evaluate a challenged voting practice, it follows that the voting practice cannot be challenged as dilutive under § 2.” (512 U.S. at 880–881, italics added.) Here, the only “objective and workable standard for choosing a reasonable benchmark” is the one selected by the Supreme Court in *Bartlett v. Strickland* (2009) 556 U.S. 1, 16-25 (plurality): a constitutionally

	17.) “[I]n order to decide whether an electoral system has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it ‘should’ be for minority voters to elect their preferred candidates under an acceptable system.” (<i>Gingles</i> , 478 U.S. at 88 (O’Connor, J., concurring).) Where comparison to any reasonable benchmark reveals that a protected class’s votes are <i>not</i> being diluted—i.e., where that class <i>already has</i> a voting opportunity that relates favorably to its population—there is no legal requirement to jettison an at-large system; “there neither has been a wrong nor can be a remedy.” (<i>Emison v. Growe</i> (1993) 507 U.S. 25, 40–41.)
3:12-18	Even if the CVRA does not require a plaintiff to prove the possibility of a majority-minority district (although it is far from clear that districts falling short of that standard are constitutional), it still must be read to require a plaintiff to prove that some alternative electoral scheme would enhance the voting power of the minority group at issue. Section 14027 requires proof of injury in the form of vote dilution that is caused by an at-large electoral system.
4:2-12	No appellate court has decided that “showing racially polarized voting establishes the at-large election system dilutes minority votes and therefore violates the CVRA.” To the contrary, the statute (specifically, section 14027) requires a showing of vote dilution independent of racially polarized voting. This independence makes sense. Even if voting patterns are statistically significantly different across racial or ethnic lines, such differences are irrelevant unless some alternative electoral structure would produce different results. Otherwise, even a protected class of one might be able to make a CVRA case if he could prove that he voted differently from the white majority in most elections, despite the impossibility of any alternative system yielding a different result.
4:12	Racially polarized voting is <i>an</i> element of the CVRA, not “[t]he key element.”
4:16-17	The “harm” the CVRA is “intended to combat” is vote dilution, which requires proof that an alternative electoral system would yield a different result, not just proof of an at-large system and racially polarized voting. Racially polarized voting, by itself, cannot be an injury, because in many cases it could not be remedied at all (because the relevant minority group is too small and/or dispersed for any alternative electoral system to enhance its voting strength) and because many remedies, including districted elections, harness rather than eliminate racially polarized voting (in other words, they are required as a remedy only because it is assumed that voting will continue to be fractured along racial or ethnic lines).
4:19-22	The CVRA does not direct courts to analyze only those elections in which at least one candidate is a member of a protected class.

permissible single-member district in which minority voters account for a majority of the CVAP. The Court need not follow *Bartlett* to grant judgment in favor of the City, because plaintiffs’ hypothetical alternative methods of election would not enhance Latino voting strength. Nevertheless, the City raises this argument here—that the only appropriate vote-dilution “benchmark” is a hypothetical district whose voting-age population is majority-Latino—to preserve it.

The CVRA repeatedly makes plain that the touchstone of the racial-polarization analysis is not the race or ethnicity of the candidate, but instead the preferences of the voters. Indeed, the statute defines “racially polarized voting” in terms of voter preference. (Elec. Code, § 14026, subd. (e) [“difference . . . in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate”].)

Several portions of Section 14028 similarly highlight the primacy of voter preferences, irrespective of candidate ethnicity. The first sentence of subdivision (b) of Section 14028 provides that “[t]he occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, *or other electoral choices that affect the rights and privileges of members of a protected class.*” (Elec. Code, § 14028, subd. (b), italics added.) Plaintiffs conclude that Latino candidacies alone matter only by ignoring the broadly worded final clause, which covers just about any “electoral choice.” While some case law suggests that elections involving at least one candidate who is a member of a protected class may be given more weight, it in no way indicates that other elections can or should be ignored. See discussion relating to 8:6-11 & fn.4 below.

Further, the subdivision goes on to provide that “the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class . . . have been elected” is only “[*o*]ne circumstance that may be considered in determining a violation of Section 14027 and this section.” (Elec. Code, § 14028, subd. (b), italics added.) According to plaintiffs, votes for or against candidates who are members of a protected class are the only relevant circumstance, but it is plain from the statute that the opposite is true, as such voting is described as just “one” relevant circumstance that “may” be considered—not “the only” relevant circumstance that “must” be considered.”

The final sentence in subdivision (b) also contradicts plaintiffs’ theory. That sentence applies to multi-seat at-large elections of the type conducted in Santa Monica: “In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.” The question is whether the phrase “from members of a protected class” modifies “candidates” or “groupwide support.” Both the syntax of the sentence itself and consideration of the statute as a whole make clear that it must be the latter. Where the statute addresses the ethnicity of candidates, it consistently uses the phrase “candidates who are [themselves] members of a protected class,” including in the very same sentence. Here, by contrast, the statute uses a different formulation—“from members of a protected class”—which must modify “groupwide support.” The statute thus provides that courts are to consider the voting support that candidates receive “from members of a protected class,” whatever the race or ethnicity of those candidates might be.

Further, federal law likewise focuses on voter preferences rather than candidates' races or ethnicities. A precondition of liability under the CVRA and FVRA alike is a protected class's ability to elect candidates of its choice. (Elec. Code, § 14027; 52 U.S.C. § 10301, subd. (b).) Both statutes—whose wording is quite similar, as the CVRA was modeled after the FVRA—also provide that “one circumstance” that “may be considered” is the “extent to which” “members of a protected class” “have been elected.” (*Ibid.*)

Federal courts interpreting this language have consistently held that minority-preferred candidates need not themselves be members of the relevant minority group. Courts regularly warn litigants and experts not to draw the questionable assumption that voters can and do prefer only candidates of their own race or ethnicity. The Fourth Circuit, for example, has held that “Section 2 prohibits any election procedure which operates to deny to minorities an equal opportunity to elect those candidates whom they prefer, *whether or not those candidates are themselves of the minority race.*” (*Lewis, supra*, 99 F.3d at p. 606.) The court’s holding depended not just on the “unambiguous language” of Section 2, but also on its rejection of the presumption that voters always prefer candidates of their own race. Such a presumption “would itself constitute invidious discrimination of the kind that the Voting Rights Act was enacted to eradicate, effectively disenfranchising every minority citizen who casts his or her vote for a non-minority candidate. To acquiesce in such a presumption would be not merely to resign ourselves to, but to place the imprimatur of law behind, a segregated political system. . . .” (*Id.* at p. 607.) The Second Circuit has similarly “decline[d] to adopt an approach precluding the possibility that a white candidate can be the actual and legitimate choice of minority votes,” as such a ruling “would project a bleak, if not hopeless, view of our society” and would “presuppose the inevitability of electoral apartheid”—a result particularly incongruous where courts are “interpreting a statute designed to implement the Fourteenth and Fifteenth Amendments to the Constitution.” (*NAACP, Inc. v. City of Niagara Falls, N.Y.* (2d Cir. 1995) 65 F.3d 1002, 1016.) Many other courts have reached similar conclusions. (See, e.g., *Ruiz v. City of Santa Maria* (9th Cir. 1998) 160 F.3d 543, 551 [joining eight other circuits “in rejecting the position that the ‘minority’s preferred candidate’ must be a member of the racial minority” and also holding that “a candidate who receives sufficient votes to be elected if the election were held only among the minority group in question qualifies as minority-preferred”].)

Indeed, if the CVRA were interpreted to require the Court to examine only elections involving Latino or Latino-surnamed candidates, the CVRA would be unconstitutional as applied to the facts of this case because it would rest on the unconstitutional presumption that Latinos care about and vote for only other Latinos. Such a presumption would work the same sort of stigmatic harm that the Supreme Court aimed to address in such cases as *Shaw v. Reno* (1993) 509 U.S. 630.

5:1-6

Clarification: a plaintiff may not need to demonstrate “the desirability of any particular remedy,” whatever precisely that may mean, to establish a violation of the CVRA, but a plaintiff must show that an alternative electoral system would enhance the voting power of the relevant minority

group. Proving the existence of vote dilution is not the same as selecting a remedy; it is, instead, a matter of proving the existence of a remediable injury in the first place.

Section III.A: “Defendant Employs An ‘At-Large’ Method of Electing Its City Council, and Plaintiffs Have Standing to Challenge That At-Large Method Pursuant to the CVRA.” (page 5, line 7 through page 6, line 6)

Plaintiff Pico Neighborhood Association (PNA) does not have standing to sue the City under the CVRA. Only “voters” may bring a claim under the CVRA, and the PNA is not a voter.

Objectionable portion of PSOD	Specific objections/responses
5:21–6:6	<p>The PNA lacks standing to assert a claim under the CVRA, either directly or representationally. By its express terms, the CVRA creates a cause of action for a “voter who is a member of a protected class and who resides in a political subdivision where a violation of [the CVRA] is alleged.” (Elec. Code, § 14032.) But, as a juridical entity, the PNA is neither a voter nor a member of a protected class. A “voter” is “any person who is a United States citizen 18 years of age or older” and “who is registered under” the Elections Code. (Elec. Code, §§ 321, 359.) Only natural persons can therefore qualify as voters. The same is true of membership in a protected class, which the CVRA defines as “a class of <i>voters</i> who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act.” (<i>Id.</i> § 14026, subd. (d), italics added.) Because the PNA cannot be a voter or a member of a protected class, it necessarily lacks standing to sue.</p> <p>Nor can the PNA bring a representational claim under the CVRA. “If the Legislature has specifically provided by statute for judicial review under certain circumstances, the inquiry as to standing must begin and end with a determination whether the statute in question authorizes an action by a particular plaintiff.” (<i>Midpeninsula Citizens for Fair Hous. v. Westwood Investors</i> (1990) 221 Cal.App.3d 1377, 1387–1389.) In <i>Amalgamated Transit Union, Local 1756 v. Superior Court</i> (2009) 46 Cal.4th 993 (<i>Amalgamated Transit</i>), for example, the California Supreme Court rejected a union’s attempt to bring a representational suit under the Labor Code Private Attorneys General Act, which vests standing only in “aggrieved employee[s].” (<i>Id.</i> at pp. 1004–1005.) “Because plaintiff unions were not employees of defendants, they cannot satisfy the express standing requirements of the act.” (<i>Id.</i> at p. 1005.) Similarly, because the CVRA limits standing to “voter[s] who [are] member[s] of a protected class” (Elec. Code, § 14032), and because the PNA is not a “voter,” much less a “member of a protected class” (<i>ibid.</i>), it “cannot satisfy the express standing requirements of the act.” (<i>Amalgamated Transit</i>, 46 Cal.4th at p. 1005.)</p>

1 ***Section III.B: “The Relevant Elections Are Consistently Plagued By Racially Polarized***
2 ***Voting.” (page 6, line 7 through page 18, line 5)***

3 There is no legally significant racially polarized voting in the City of Santa Monica, because
4 Latino-preferred candidates are not usually defeated by white bloc voting.

5 Determining whether there is a history of legally significant racially polarized voting requires
6 an analysis of more than one or even a few elections. Plaintiffs insist that the only elections the Court
7 should examine are those in which a Latino or Latino-surnamed candidate ran for office. This insist-
8 ence runs counter to most federal case law, as courts generally examine all elections and sometimes
9 assign lesser weight to elections in which no minority candidates were running. But the Court need
10 not examine all elections in order to conclude that there is no history of legally significant racially
11 polarized voting. Even the elections favored by plaintiffs, if properly analyzed, demonstrate that La-
12 tino-preferred candidates usually win.

13 The analysis must begin with the identification of Latino-preferred candidates. Plaintiffs pay
14 lip service to the principles that Latino voters can prefer non-Latino candidates, and, in a multi-seat,
15 plurality at-large election can prefer more than one candidate, but their analysis disregards these prin-
16 ciples and looks only at Latino (or Latino-surnamed) candidates. This analysis perpetuates the wrong-
17 headed and unconstitutional assumption that Latino voters can prefer only Latino (or Latino-surnamed)
18 candidates. The Court should reject this analysis. Instead, rather than looking solely at voting patterns
19 for Latino candidates, the Court must look to the voting patterns for all candidates (regardless of their
20 race or ethnicity) to determine which of those candidates are estimated to have received the strongest
21 support from Latino voters. In other words, the list of potentially Latino-preferred candidates must be
22 those who (based on the estimates generated by the statistical methods used by plaintiffs’ and City’s
23 experts) would have won the election if Latinos had been the only voters.

24 That a candidate would have won if Latinos had been the only voters does not necessarily
25 demonstrate that the candidate was truly Latino-preferred. For example, suppose one candidate was
26 supported by every Latino voter, whereas the next-most-preferred candidate was supported by just one
27 Latino voter in five. Both would have won if Latinos had been the only voters, but it is unreasonable
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1 to label the second as truly Latino-preferred. Accordingly, courts disregard candidates who win a
2 “significantly” smaller share of the minority vote than other potentially preferred candidates.

3 As a final step in differentiating Latino-preferred candidates from the rest of the field, the Court
4 should examine whether the Latino electorate truly did cohesively support any of the remaining poten-
5 tially preferred candidates. Some courts reasonably adopt a numerical cutoff for such cohesion—50
6 percent. Where fewer than 50 percent of Latino voters supported a candidate, that candidate was not
7 truly “preferred” by Latino voters.

8 As a result of this three-step analysis, the Court will identify—by relying on estimates of voting
9 behavior alone, rather than by indulging in impermissible assumptions that minority groups will vote
10 only for “one of their own”—the candidates cohesively backed by the Latino electorate. Applying this
11 three-step analysis to the seven elections on which plaintiffs have relied (those plaintiffs have identified
12 as involving at least one Latino-surnamed candidate), and using the data generated by plaintiffs’ own
13 expert, results in the identification of 16 Latino-preferred candidates.

14 Identifying the Latino-preferred candidates is of course only part of the analysis. The Court
15 must also determine whether those candidates won or lost and, if they lost, whether it was because of
16 white bloc voting or for some other reason, including a lack of support from other minority groups or
17 some “special circumstances” that should exempt an election from the analysis.

18 In this case, the data generated by plaintiffs’ own expert reveals that just six of the 16 Latino-
19 preferred candidates who ran in the Council elections favored by plaintiffs lost, and only three were
20 even arguably defeated by white bloc voting. And, even if the Court were to limit itself to the 10
21 Latino-surnamed candidates to whom plaintiffs limit their analysis, the data generated by plaintiffs’
22 own expert reveals that at most four of those 10 were both preferred by Latino voters and even arguably
23 defeated by white bloc voting. Under either approach, the result is far from “usual” defeat of Latino-
24 preferred candidates at the hands of a cohesive white majority, as the law requires.

25 Elections for other local offices underscore this conclusion. In the PSOD, plaintiffs point to
26 differences in the level of Latino and white support for various Latino-surnamed candidates for local
27 offices. But such differences are of no legal significance where the candidates won. Indeed, of the 15
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candidacies noted in the PSOD, excluding the one that was effectively unopposed, 13 were successful. Looking at initiatives yields the same results. The City’s white voters joined its Latino voters in sufficient numbers to reject several racially charged propositions (Props. 187, 209, 227, and 54), even though three of these were approved statewide. Plaintiffs’ purported evidence of liability instead shows that Latinos are consistently able to elect candidates (and prevail on issues) of their choice.

Objectionable portion of PSOD	Specific objections/responses
6:20-26	The CVRA does not focus solely on elections in which at least one candidate is a member of the protected class of interest. See the response to 4:19-22 above. <i>Gomez v. City of Watsonville</i> (9th Cir. 1988) 863 F.2d 1407 is an FVRA case that is not properly read as mandating in all cases a focus solely on elections in which at least one candidate is a member of the protected class of interest.
6:28–7:5	<p>Plaintiffs are conflating the vote-dilution element in Section 14027 with the racial-polarization element in Section 14028. They are distinct and must be given independent meaning. Plaintiffs’ reading of the statute would effectively delete Section 14027 from the CVRA.</p> <p>Plaintiffs also misinterpret <i>Gingles</i>. Satisfying the third <i>Gingles</i> preconditions “demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives” only because the <i>first Gingles</i> precondition has necessarily already been satisfied. Courts adjudicating Section 2 claims do not reach the second and third <i>Gingles</i> preconditions unless and until they are satisfied that plaintiffs can satisfy the first <i>Gingles</i> precondition (by showing that it is possible to draw a constitutionally permissible district in which the relevant minority group accounts for a majority of eligible voters).</p> <p>Here, by contrast, plaintiffs have insisted that vote dilution is not an element of the CVRA, and that the statute does not require a plaintiff to demonstrate that a majority-minority district is possible. If there is no requirement to prove vote dilution through some means—whether the possibility of a majority-minority district or otherwise—then satisfying the second and third <i>Gingles</i> preconditions alone could not possibly show that “submergence in a white multimember district impedes [a minority group’s] ability to elect its chosen representatives.” Even a trivially small but consistently cohesive minority group could do so, despite the fact that the group could not possibly elect candidates of its choice under any alternative electoral scheme.</p>
7:6-18	The parties agree that ecological regression and ecological inference are appropriate methods of estimating voting behavior in Section 2 cases. The parties differ on the question whether the estimates reached in this case—where the relevant minority group is small and integrated throughout the City—are a suitable basis for drawing firm conclusions about voting behavior. Because federal law requires plaintiffs to demonstrate the viability of a majority-minority district, every federal case consistent with

1		current law necessarily features a larger and more compact minority group, such that minorities account for the vast majority of voters in many precincts. Nearly homogeneous precincts make the analysis far more accurate (and the confidence intervals <i>much</i> narrower). (See, e.g., <i>Garza v. City of Los Angeles</i> (C.D.Cal. 1990) 756 F.Supp. 1298, 1337–38.) Further, the confidence intervals here are not just wide, but likely systematically inaccurate, for reasons explained below in response to 15:4-7, 15:8-10, 15:16-20, 15:20–16:2, 16:3-6, and 16:6-12, which objections are incorporated by reference here.
2	7:22–8:1 & fn. 3	<i>Neither</i> expert’s analyses demonstrate legally significant racially polarized voting. There is no evidence that (properly identified) Latino-preferred candidates usually lose because of white bloc voting. To the contrary, Latino-preferred candidates generally win City Council elections, and almost always win other local elections. To the extent plaintiffs rely on the opinions asserted by their experts, those opinions are without basis in the fact and represent legal conclusions premised on incorrect legal standards to which the City objects for the reasons set forth in the general objections above.
3	8:1-4	Plaintiffs are incorrect that in “most elections where the choice is available, Latino voters strongly prefer a Latino candidate running for Defendant’s city council, but, despite that support, the preferred Latino candidate loses.”
4		Plaintiffs focus on 10 candidates in seven elections. (PSOD at 10.) In 1996, the Latino-surnamed candidate, Alvarez, placed seventh (by Dr. Kousser’s point estimates) among Latino voters, with just 22% of the Latino vote. (Ex. 275.) This was not “strong” support. In 2008, the Latino-surnamed candidate, Piera-Avila, placed third (by Dr. Kousser’s point estimates) among Latino voters, with just 33.3% of the vote. (Ex. 284.) This was not “strong” support. In 2012, Latino voters strongly preferred Vazquez (Ex. 287), and he <i>won</i> . They did not strongly prefer Gomez or Duron. Gomez placed fifth (by Dr. Kousser’s point estimates) among Latino voters, with just 30.4% of the vote. (<i>Ibid.</i>) Duron placed tenth among Latino voters, with just 5.0% of the Latino vote. (<i>Ibid.</i>) Finally, Latino voters preferred both Vazquez and de la Torre in 2016; Vazquez <i>won</i> . Thus, of the 10 candidates, only four were both preferred by Latino voters and lost: Vazquez in 1994, Aranda in 2002, Loya in 2004, and de la Torre in 2016. Moreover, with respect to these four, as discussed below: it was not white bloc voting that resulted in Vazquez’s 1994 loss; Loya and de la Torre declined to support Aranda for an important endorsement in 2002 – instead throwing their support to Abby Arnold, a non-Latina candidate; and de la Torre chose to forego his previously successful campaign strategies in 2016. (E.g., Tr. 207:24–210:26, 2478:27–2481:6; see also response to 12:3-5 & fn. 10 below.) In addition, inexplicably, plaintiffs ignore the 2014 election in which Zoe Muntaner, a Latina-surnamed candidate (see Ex. 302-131) ran and placed eighth among Latino voters, with just 8% of the Latino vote. (Ex. 1653A at 30.)
5		Even if plaintiffs’ statement were factually accurate, it would nevertheless be irrelevant. For reasons explained above (in response to 4:19-22), the Court should determine which candidates are Latino-preferred irre-

1		spective of their race— <i>not</i> , as plaintiffs suggest, simply assume that Latino or Latino-surnamed candidates will be the only candidates preferred by Latino voters.
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3	8:6-11 & fn. 4	For reasons explained above (in response to 4:19-22), the CVRA does not call for analysis only of those elections in which at least one candidate is a member of the protected class. For each and every election, the Court should determine which candidates are Latino-preferred irrespective of their race— <i>not</i> , as plaintiffs suggest, limit its analysis only to “racially-contested elections” and assume that Latino or Latino-surnamed candidates will be the only candidates preferred by Latino voters.
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7		Further, even if it were appropriate to give greater weight to elections in which at least one Latino or Latino-surnamed candidate ran, it would be legal error to ignore all other elections. The CVRA itself does not instruct courts to do so. Nor does the relevant federal case law. Some courts give equal weight to <i>all</i> elections, irrespective of the number of members of a protected class running. (E.g., <i>Lewis, supra</i> , 99 F.3d at 608–609.) Other courts give less weight to elections in which no candidate was a member of the protected class, as several parentheticals in footnote 4 of the PSOD make clear. (See also, e.g., <i>Rural W. Tenn. African-American Affairs Council v. Sundquist</i> (6th Cir. 2000) 209 F.3d 835, 840; see also <i>Ruiz v. City of Santa Maria</i> (9th Cir. 1998) 160 F.3d 543 [“Most courts hold that a fully non-minority election may be relevant and is admissible to determine whether there is a voting bloc of sufficient power that usually defeats a minority’s preferred candidate. An election pitting a minority against a non-minority, however, is considered more probative and accorded more weight.”].)
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16		The City maintains that the Court should analyze and give equal weight to <i>all</i> elections. At the very least, it should give <i>some</i> weight to all elections, including elections in which no member of the protected class ran for office. Plaintiffs ignore those elections altogether without justification.
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19	8:12–9:17 & fn. 5	Plaintiffs have misread <i>Gingles</i> . The opinion’s use of the phrase “black candidate” did not mean that the only candidates who could be preferred by black voters must themselves be black. In his plurality opinion, Justice Brennan clarified as much: “Because both minority and majority voters often select members of their own race as their preferred representatives, it will frequently be the case that a black candidate is the choice of blacks, while a white candidate is the choice of whites. [Citation.] Indeed, the facts of this case illustrate that tendency—blacks preferred black candidates, whites preferred white candidates. Thus, as a matter of convenience, we and the District Court may refer to the preferred representative of black voters as the ‘black candidate’ and to the preferred representative of white voters as the ‘white candidate.’ Nonetheless, the fact that race of voter and race of candidate is often correlated is not directly pertinent to a § 2 inquiry. Under § 2, it is the <i>status</i> of the candidate as the <i>chosen representative of a particular racial group</i> , not the race of the candidate, that is important.”
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27		Since <i>Gingles</i> was decided, courts have uniformly concluded that a minority group can prefer a non-minority candidate, and there is no reason
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1 to conclude that the CVRA departs from this norm, as was explained
2 above in response to 4:19-22. Plaintiffs themselves admit as much mul-
3 tiple times in their PSOD. (See, e.g., PSOD at 17 [“No doubt, a minority
4 group can prefer a non-minority candidate”].) And yet their expert’s anal-
5 ysis does not even account for that possibility, as it addresses only the
6 support for Latino-surnamed candidates, despite the fact that non-Latino-
7 surnamed candidates received greater Latino support (by the point esti-
8 mates of plaintiffs’ expert) than losing Latino-surnamed candidates in
9 1996, 2008, and 2012, as well as statistically and practically equivalent
10 support in 1994 and 2002.

11 In footnote 5, plaintiffs confuse the issue. The cases they cite stand, at
12 most, for the proposition that courts should give cross-racial elections
13 greater weight than elections in which no member of the protected class
14 ran. But the paragraph from which footnote 5 hangs appears to be de-
15 voted to a different point—that in analyzing only cross-racial elections,
16 experts should examine only the levels of minority and non-minority sup-
17 port for minority candidates and ignore any other estimates of voter be-
18 havior. The cases do not stand for that proposition.

19 In sum, plaintiffs cannot both admit that non-minority candidates could
20 be preferred by minority voters and also aver that the analysis of any elec-
21 tion must begin and end with minority candidates. Accordingly, even if
22 the Court accords no weight at all to elections in which no Latino or La-
23 tino-surnamed candidates ran—which itself would be legal error—it
24 should at least account for the possibility that non-Latino-surnamed can-
25 didates were preferred by Latino voters over Latino-surnamed candidates,
26 as was the case in 1996 (Ex. 275), 2008 (Ex. 284), and 2012 (Ex. 287)
27 (and 2014 as well, Ex. 1653A at 30), or the possibility that non-Latino-
28 surnamed candidates and Latino-surnamed candidates were, as a statisti-
cal and practical matter, equally preferred, as was the case in 1994 (Ex.
272) and 2002 (Ex. 278).

10:1-14

For reasons already explained, plaintiffs err in focusing exclusively on
elections in which Latino-surnamed candidates ran. Elections in which
no such candidates ran deserve equal weight in the analysis or, at the very
least, *some* weight.

Plaintiffs also err in focusing exclusively on voting for the Latino-sur-
named candidates in those few elections that plaintiffs’ expert did ana-
lyze. Focusing on the Latino-surnamed candidates alone does not account
for the possibility that Latinos preferred non-Latino-surnamed candidates
over one or more Latino-surnamed candidates, as they did in, for exam-
ple, 1996 (Ex. 275), 2008 (Ex. 284), and 2012 (Ex. 287) (and 2014 as
well, Ex. 1653A at 30), or the possibility that the Latino preference for
the Latino-surnamed candidate was not meaningfully stronger than the
Latino preference for a non-Latino-surnamed candidate, as was true in
1994 (Ex. 272) and 2002 (Ex. 278).

Finally, the PSOD’s report of Dr. Kousser’s analysis is incomplete be-
cause it shows only the percentages of Latino and non-Hispanic white
support. Dr. Kousser’s analysis actually included estimates of percent-
age support among two additional groups—African-Americans and

	<p>Asians. This is important because Dr. Kousser’s own weighted-regression analyses demonstrate that non-Hispanic whites sometimes supported Latino-surnamed candidates at levels almost identical to those at which they supported their other preferred candidates, and that the true cause of the Latino-surnamed candidates’ defeat was thus not white bloc voting, but instead the bloc voting of other minority groups. This is particularly true of Tony Vazquez in 1994, who received substantial support from white voters but almost no support from African-Americans and Asians—a deficiency that cost him the election. In sum, plaintiffs have failed to account for the third <i>Gingles</i> precondition, which requires a showing of causation. Where whites voted sufficiently as a bloc for the candidate to win, but other minority groups did not, the third precondition cannot be satisfied, and any racially polarized voting cannot be legally significant.</p>
10, fn. 6	<p>It is Dr. Kousser’s view that weighted ER is preferable on these facts. It is far from clear that weighted ER is indeed the best method, however, not least because it yields manifestly absurd estimates of voting behavior (e.g., that well over 100% of Latino voters voted for a particular candidate, or that a negative number of voters did so). In any event, for the reasons explained below in response to 15:4-7, 15:8-10, 15:16-20, 15:20-16:2, 16:3-6, 16:6-12, which objections are incorporated by reference here, none of these estimation methods consistently yields meaningful results in this context, where the relevant minority group is so small and so integrated throughout the City.</p>
10, fn. 7	<p>Gleam Davis is Latina. (Tr. 4303:17-20, 4305:19-4306:26, 4350:9-4360:5.) The CVRA defines “protected class” by reference to the FVRA. (§ 14026(d).) The FVRA, in turn, defines as one protected class “persons who are . . . of Spanish heritage.” (52 U.S.C. §§ 10303(f)(2), 10310(c)(3).) Because the statute speaks only in terms of the fact of Spanish heritage, not others’ perception, Ms. Davis is Latina, and Mr. Brown’s poll is irrelevant. What is more, contrary to their representation in footnote 7, no case or statute cited in footnote 5 of the PSOD supports the proposition that the perception of voters trumps the fact of Spanish heritage.</p>
10, fn. 8	<p>This is an inaccurate description. Voters can cast at most one vote for a particular candidate, so an estimate of the number of voters “who cast at least one vote for each candidate” would be the same as the number who cast one vote for that candidate – this is what Dr. Kousser estimated. Significantly, the statistical estimates of group support for candidates says nothing about the preferred ranking of candidates by individual voters. Thus, for example, in 2004, we cannot know how many of the 106% of Latino voters who Dr. Kousser estimated voted for Loya had Loya as their first preference, as compared to those who had her as their second, third, or fourth preference (that election being for four seats with the result that voters could cast up to four votes). (Tr. 3170-3180, Ex. 1917.) This is yet another reason why it is necessary to begin the analysis of who is a preferred candidate not by looking solely to a Latino-surnamed candidate, but by looking to all the candidates who received sufficient Latino support to win; it is also another reason why in many circumstances it is entirely appropriate to conclude that there is more than one Latino-preferred candidate.</p>

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2	11:1	Again, plaintiffs have told an incomplete story. In 1994, Vazquez received sufficient support from whites to win; indeed, if only whites had voted, Vazquez would have won in 1994. It was his failure to attract African-American and Asian support that doomed his candidacy.
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4		Aranda lost in 2002, but Latinos' preference for her was indistinguishable from their preference for McKeown, who won.
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6		Piera-Avila was not preferred by Latino voters in 2008. Genser was, and he won.
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8		Gomez and Duron were not preferred by Latino voters in 2012, so purported racial polarization is irrelevant.
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10		And Vazquez won in both 2012 and 2016, which also makes any purported racial polarization irrelevant.
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12		Under a proper analysis, racially polarized voting arguably causes the defeat of a Latino-preferred candidate <i>at most</i> in three of the seven elections identified by plaintiffs (2002, 2004, and 2016), and in two of those elections (2002 and 2016), another candidate who enjoyed roughly identical support from Latino voters won.
13	11:2-8	Plaintiffs did not at trial and have not in their PSOD defined what it means for a candidate to be "serious," nor did they supply evidence at trial or any explanation in their PSOD as to how "seriousness" influences the analysis.
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16		Losing Latino-surnamed candidates did <i>not</i> receive the most votes in all but one of the seven elections analyzed by plaintiffs' expert. Plaintiffs insist that the point estimate of Latino support supplied by weighted regression is the most reliable. In 1994, the point estimate of Latino support for both Tony Vazquez and Pam O'Connor exceeds 100%, which plaintiffs' expert interprets to mean that just about every Latino voter voted for those candidates. (Ex. 272; Tr. 754:2-9, 769:23-25, 804:18-21.) In 1996, the point estimate of Latino support for the Latina-surnamed candidate, Donna Alvarez, is lower than that for <i>six</i> other candidates. (Ex. 275.) In 2002, the point estimate of Latino support for Kevin McKeown (76.8) is not meaningfully different from that of the Latina candidate, Josefina Aranda (82.6). (Ex. 278.) In 2008, the Latina candidate, Linda Piera-Avila, received fewer Latino votes than <i>two</i> non-Latino candidates, Richard Bloom and Ken Genser. In 2016, the point estimate of Latino support for the <i>winning</i> Latino candidate in 2016, Tony Vazquez (78.3), is not meaningfully different from that of the losing Latino candidate, Oscar de la Torre (88.0). (Ex. 290.) And in 2014, an election plaintiffs ignore, the point estimate of Latino support for the Latino-surnamed candidate, Zoe Muntaner, is lower than that for <i>seven</i> non-Latino candidates. (Ex. 1653A at 30.)
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26	11:8-15	Plaintiffs' contention that Councilmember Vazquez "barely won" in 2012 is irrelevant. He won, and that is all that matters. Racial or ethnic differences in voting patterns cannot be legally significant if the minority-preferred candidate wins, as that candidate necessarily will have received
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1		sufficient crossover support from white voters. In other words, the victories of minority-preferred candidates necessarily weigh against a finding that the “majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” (478 U.S. at 51 [third <i>Gingles</i> precondition].)
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4		If plaintiffs are now implying that 2012 presented a special circumstance, such that the election should not factor into the court’s analysis of the third <i>Gingles</i> precondition, they waived any such argument, as was noted in footnote 8 (page 8) of the City’s Closing Brief.
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7	11:16	The Court must determine not only that Vazquez lost, but <i>why</i> he lost. If the cause of his defeat was not white bloc voting, then the defeat cannot be legally significant under the third <i>Gingles</i> precondition. Plaintiffs’ own expert’s analysis demonstrates that Vazquez lost not because of white bloc voting, but because of a lack of black and Asian support. Had only whites and Latinos voted, Finkel and Vazquez would have won, as they are estimated to have received the largest shares of Latino votes (122.4% and 145.5%, respectively) and the second- and third-largest shares of white votes (37.6% and 34.9%, respectively) in a three-seat election.
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12		In addition, Latino support for Vazquez was not statistically distinguishable from Latino support for other candidates. (Ex. 272.) What is more, plaintiffs’ expert, Dr. Kousser, estimates that three candidates in that year received more than 100% of Latino votes (<i>ibid.</i>), an admittedly impossibly high figure that Dr. Kousser would interpret to mean that each candidate received universal support from Latino voters. (Tr. 754:2-9, 769:23-25, 804:18-21.)
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16	11:17-18	Aranda was not meaningfully more preferred than McKeown, who won. Their Latino-support point estimates are nearly identical (82.6% and 76.8%)—far from “significantly” different, either under the relevant cases (e.g., <i>Levy v. Lexington Cty.</i> (4th Cir. 2009) 589 F.3d 708, 716) or as a statistical matter, particularly given the large confidence intervals around these point estimates. (See Ex. 278 [confidence interval for Aranda ranges from 57.9% to 107.3%; confidence interval for McKeown ranges from 31.7% to 121.9%]; Tr. 3064:12-21 [Mr. Levitt agreeing that there is “substantial overlap between Ms. Aranda and Mr. McKeown’s support from the Latino electorate”].) Moreover, in 2002, both Loya and de la Torre declined to support Aranda for an important endorsement – instead throwing their support to Abby Arnold, a non-Latina candidate. (E.g., Tr. 207:24–210:26, 2478:27–2481:6.)
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23	11:19-21 & fn. 9	It is unclear what plaintiffs mean by “serious,” and they provide no basis for distinguishing “serious” from “not particularly serious” or non-serious candidates. The City’s three-pronged approach to identifying Latino-preferred candidates, on the other hand, incorporates a 50% vote threshold precisely to ensure that candidates are indeed Latino-preferred. Piera-Avila fell well short of this threshold in 2008.
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27		It is also unclear what plaintiffs mean by “significant support.” In other elections, plaintiffs focus exclusively on point estimates of Latino sup-
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1		port—e.g., in the 2002 election, in which they erroneously assert that Ar-
2		anda was meaningfully more preferred than McKeown. And yet in the
3		2008 election, plaintiffs focus on Piera-Avila alone despite the fact that
4		the point estimates of Latino support for two white candidates (Genser at
5		55.1% and Bloom at 49.7%) are higher than the point estimate of Latino
6		support for Piera-Avila (33.3%). Indeed, the difference between the point
7		estimates of Latino support for those white candidates and the point esti-
8		mate for Piera-Avila—between 16.4 and 21.8 percentage points—vastly
9		exceeds the difference in point estimates of Latino support for Aranda
10		and McKeown in 2002 (5.8 percentage points, which is also notably
11		smaller as a percentage of total estimated support).
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13		In sum, the numbers demonstrate that Piera-Avila was not preferred by
14		Latinos. She received a small share of the Latino vote—and significantly
15		less support than two white candidates. Her defeat—and any difference
16		between Latino and white voting for her—is therefore legally irrelevant
17		under <i>Gingles</i> .
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19		Finally, it is not clear in the least from the Supreme Court’s decision in
20		<i>Gingles</i> that the example of Mr. Norman underscored any conclusion
21		about racially polarized voting. What is clear from the opinion, however,
22		is that a candidate must be preferred by the minority group to be legally
23		relevant. Latinos did not cohesively prefer Piera-Avila.
24	11:21-23	Irrelevant. As noted above (with respect to 11:8-15), plaintiffs waived
25		any argument that the 2012 election presented “special circumstances.”
26	12:1-3	Differences in voting patterns are irrelevant in this election. Vazquez
27		won. Racially polarized voting is not legally significant under <i>Gingles</i>
28		unless white bloc voting is usually sufficient to <i>defeat</i> the preferred can-
		didates of minority voters. Where those preferred candidates win, the
		voting habits of white voters are irrelevant.
	12:3-5 & fn. 10	De la Torre was not meaningfully more preferred than Vazquez, who
		won. And the Court should disregard his candidacy in any event because
		de la Torre threw the election in order to support this lawsuit. Plaintiffs
		are wrong that no evidence supports that conclusion; the City cited a great
		deal of evidence in its closing brief and proposed verdict form. In 2016,
		after his wife and his organization (PNA) filed this lawsuit, de la Torre
		entered the City Council election. In his multiple successful School
		Board campaigns, de la Torre had sought endorsements from civic organ-
		izations; raised as much as \$35,000; used a candidate-control committee;
		and advertised, including with mailers. (E.g., Ex. 1203 [ad]; Ex. 1706
		[SMRR endorsement]; Tr. 2500:16–2513:19 [testimony concerning de la
		Torre’s efforts in his prior campaigns].) Other candidates, both success-
		ful and unsuccessful, described taking similar steps in their campaigns.
		(E.g., Tr. 194:20–196:4 [Loya]; Tr. 3411:6–3420:28 [O’Day].) Indeed,
		plaintiffs have repeatedly contended that raising money and securing en-
		dorsements are essential to winning in Santa Monica. But in 2016, de la
		Torre sought no endorsements, raised less than \$1,000, had no candidate-
		control committee, and did no advertising. (E.g., Ex. 1204, Tr. 2516:1–
		2517:28, 2518:12-17, 2520:10-20 [de la Torre entered race late and de-
		cided not to seek any endorsements]; Tr. 2522:17–2523:25 [quickly
		ceased fundraising efforts]; Tr. 2524:26–2527:19 [although he claimed at

1		deposition to have used a candidate-control committee, he could not account for the fact that the City has no record of any such committee]; Tr. 3423:13-25, 3427:8-137 [O'Day never saw de la Torre canvassing for votes or at candidate forums, though O'Day observed de la Torre doing such things for his School Board campaigns]; Tr. 4050:18-4051:14 [Jara, who had campaigned on behalf of de la Torre in School Board elections, did not believe he was interested in winning a Council seat].) This evidence (among other evidence from the trial record) shows that he ran and lost on purpose to bolster plaintiffs' weak case.
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6		Finally, plaintiffs contend that de la Torre's consistently strong performance among Latinos somehow proves that he must have tried to win in 2016 to the same degree that he did in School Board elections. This is a non sequitur that does not respond to the City's argument. De la Torre knew that he could count on the support of a subset of voters (including a large subset of Latino voters) even without extensive campaigning. But, like any other candidate, he would have to convince other voters (including non-Latino voters) of the merits of his candidacy by campaigning. And the evidence shows that he may very well have won had he done so; de la Torre was successful with white voters in his School Board runs, no doubt in large part due to his extensive campaigning efforts. (See, e.g., Ex. 1653A at 26-29.)
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13	12:16-13:9	For all the reasons discussed above, this case does not present the prototypical illustration of legally significant racially polarized voting. To the contrary, <i>neither</i> Dr. Lewis's analyses <i>nor</i> Dr. Kousser's analyses reveal legally significant racially polarized voting, regardless of whether their analyses are confined to elections involving at least one Latino-surnamed candidate.
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16	13:10-14:8	Plaintiffs are correct in recognizing that exogenous elections are entitled to some weight, though less than the City Council elections at issue. Plaintiffs' argument that exogenous elections must be disregarded because they cannot "be used to undermine a finding of racially polarized voting in endogenous elections" is irrelevant because in this case the results of the exogenous elections are consistent with those of the endogenous elections, there is no legally significant racially polarized voting in either. Moreover, even if the Court were to find legally significant racially polarized voting in the endogenous City Council elections, it would be premised on such a thin showing that it would remain appropriate to rely on exogenous elections, which overwhelmingly dispel any claim of legally significant racially polarized voting. See discussion under 14:8-15:3 below.
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23		Plaintiffs have mischaracterized <i>Bone Shirt</i> , which concludes that "exogenous elections hold some probative value," but less than endogenous elections. It does not refer to "federal courts . . . rel[ying] upon exogenous elections involving minority candidates to <i>further support</i> evidence of racially polarized voting in endogenous elections."
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26		The parenthetical also does not fit <i>Jenkins</i> , which holds that a district court may permit a defendant to introduce evidence of elections in which no minority candidate ran, but notes that such evidence of such elections
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1		may not be enough to overcome contrary evidence of endogenous elections.
2		There is a period missing after the string cite concluding on the first line of page 14.
3		The <i>Cottier</i> decision cited by the plaintiffs is not good law. In a subsequent <i>en banc</i> decision, the Eighth Circuit concluded that the district court did <i>not</i> err in relying on exogenous elections (604 F.3d 553, 561–562), and that its original judgment, entered on March 22, 2005 (but reversed in the May 5, 2006, Eighth Circuit three-judge panel decision cited by plaintiffs), “should have been affirmed.” (604 F.3d at 562.) Accordingly, “[t]he panel opinion in <i>Cottier P</i> ”—that is, the opinion cited by plaintiffs—“is set aside in its entirety, and it should not be treated as binding circuit precedent.” (<i>Ibid.</i>)
4	14:8–15:3	Racially polarized voting is not legally significant under <i>Gingles</i> unless white bloc voting is usually sufficient to <i>defeat</i> the preferred candidates of minority voters. Where those preferred candidates win, the voting habits of white voters are irrelevant. And Latino-preferred candidates overwhelmingly <i>win</i> School Board, College Board, and Rent Board elections. Of the 15 candidacies listed in the chart appearing on pages 14 and 15 of the PSOD, excluding one that was effectively unopposed (Duron for rent board in 2014), 13 were successful. Plaintiffs’ argument thus highlights the degree to which their theory of this case is inconsistent with the third <i>Gingles</i> precondition. Voting-rights statutes, the CVRA included, were never meant to identify liability and supply a remedy where the candidates preferred by minority groups almost always win.
5	14, fn. 11	Plaintiffs incorrectly attempt to distract from the record of success of Latino and Latino-preferred candidates in exogenous elections.
6		The performance of Latino candidates in Council elections is not relevant unless those candidates are also preferred by Latino voters. Latino-preferred candidates have usually prevailed in Council elections.
7		And the example of de la Torre does not prove that there is a different “political reality” in City Council and exogenous elections because de la Torre threw the Council election in 2016, doing his best to win Latino votes and not win white votes in order to support this lawsuit, as demonstrated by the City’s response to 12:3-5 & fn. 10, which objections are incorporated by reference here.
8	15:4-7	Dr. Lewis’s analysis in his report and at trial identified several limitations of the use of ecological regression and ecological inference in Santa Monica based on the demographic data. Specifically, Dr. Lewis used the neighborhood model to illustrate how the key assumptions applied to the data drive the interpretation of the results. (Tr. 2037:22-2038:18; 2236:12-2243:26.) When one assumes that neighbors vote alike regardless of their race or ethnicity, the results of the ecological regression model yields results that suggest that neighbors vote alike. (<i>Ibid.</i>) On the contrary, when one assumes that race or ethnicity is the motivating factor for voters, the ecological regression model yields results suggesting that members of a particular race vote alike. (<i>Ibid.</i>) As a result, Dr. Lewis

	further explained, there is a degree of uncertainty in the estimates provided by the ecological regression model above and beyond those reported in the confidence intervals and standard errors. (Tr. 2038:19-2039:10.)
15:8-10	Dr. Lewis identified several limitations of the data provided by the application of ecological regression and ecological inference analysis in Santa Monica. Among those limitations is the fact that the use of ecological regression and ecological inference analysis in jurisdictions, like Santa Monica, where there are no homogenous Latino precincts and the precincts being analyzed are less than majority-Latino results in an increase the uncertainty in the estimates provided by the ecological regression model above and beyond those reported in the confidence intervals and standard errors. (Tr. 2254:3–2256:11.) Indeed, in the absence of any precinct in Santa Monica in which Latino voters exceed 41 percent of the voters, there is no logical bound between 0 percent support for a candidate and 100 percent support for a candidate that can be applied. (Tr. 2216:1-11.)
15:10-16	These cases are all distinguishable. In <i>Fabela</i> and <i>Benavidez</i> , the plaintiffs could satisfy the first <i>Gingles</i> precondition. (<i>Fabela</i> , 2012 WL 3135545, at *4–6; <i>Benavidez</i> , 638 F.Supp.2d at 713–722.) Under that circumstance, even if there are few or no predominantly Latino precincts, estimates of voting behavior should nevertheless be reasonably accurate where Latinos are numerous and compact enough to account for the majority of eligible voters in a constitutionally permissible hypothetical district. That is not the case here, and so the estimates are subject to an unusual degree of uncertainty. In <i>Perez</i> , the plaintiffs could not satisfy the first <i>Gingles</i> precondition, but came quite close, with a Latino voting-age population (not citizen-voting-age population) of 55 percent. (<i>Perez</i> , 958 F.Supp. 1196.) Even under those circumstances, where Latinos were far more numerous and more compact than in this case, the court expressed concerns about “the reliability of the statistical evidence plaintiffs presented.” (<i>Id.</i> at 1220.) Those concerns are heightened here and call for even greater suspicion as to whether many estimates are meaningful.
15:16-20	Dr. Lewis’s report and testimony at trial did not ask the Court to disregard ecological regression and ecological inference estimates (Tr. 2243:17-20), but rather sought to make the Court aware that the estimates provided by these statistical methodologies are plagued by limitations that are not otherwise accounted for. (Tr. 2038:19-2039:10; 2254:3-2256:11; 2042:16-20; 2259:26-2267:23.) These limitations make the estimates provided by the ecological regression and ecological inference models less certain than indicated by their reported.
15:20–16:2	Dr. Lewis’s analysis in his report and at trial identified a limitation of the use of Spanish-surname matching to identify the set of Latino voters for purposes of applying ecological regression analysis. Dr. Lewis explained that the application of Spanish-surname matching can introduce a skew into the ecological regression data which exaggerates the differences in Latino voter support and non-Latino voter support for a particular candidate. Such a skew suggests that the confidence intervals and standard errors reported by the ecological regression model may be too small. (Tr. 2042:16-20; 2259:26-2267:23.)

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2	16:3-6	Dr. Lewis’s application of ecological regression and ecological inference to estimate Democratic party registration, and his comparison of those estimates to known figures, provides a real-world demonstration of the inaccurate estimates that can be produced by the application of these statistical methodologies to estimate the behavior of the electorate in Santa Monica. (Tr. 2243:27-2258:3.) There is no valid basis for refusing to consider this demonstration, and <i>Luna v. County of Kern</i> (E.D. Cal. 2018) 291 F. Supp. 3d 1088 does not provide one.
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6	16:6-12	Dr. Lewis’s analysis clearly demonstrates that the statistical methods accepted by federal courts in Section 2 cases are subject to additional limitations of reliability when employed in jurisdictions such as Santa Monica, where the minority population at issue is small and integrated throughout the City. These additional limitations are not reflected in the confidence intervals or standard errors reported by the statistical models and, therefore, the analysis of the results to these models should take into consideration the additional level of uncertainty that has not been reported. (Tr. 2038:19-2039:10; 2254:3-2256:11; 2042:16-20; 2259:26-2267:23.)
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12	16:13–17:4	This badly mischaracterizes the argument made by the City in its closing brief. The City did not adopt the “mechanical approach” rejected by the Ninth Circuit in the <i>Ruiz</i> case, and expressly did consider the order of preference assigned by voters to particular candidates. The City followed a <i>three-step</i> approach in identifying Latino-preferred candidates, and did not stop, as plaintiffs appear to suggest, at the first step—namely, determining who would have won had the election been held only among Latino voters. Plaintiffs have deliberately omitted the rest of the City’s analysis, which acknowledges that a minority group might in some cases have a meaningfully and measurably greater preference for one or more of the candidates who would have prevailed if members of that group were the only voters:
13		Identifying all the candidates who received sufficient votes from the relevant minority group is not the end of the analysis, however, because sometimes that group might prefer one or more of those candidates more strongly than others. For that reason, courts have held that it is error to “treat[] as ‘minority-preferred’ successful candidates who had significantly less [minority] support than their unsuccessful opponents.” (<i>N.A.A.C.P., Inc. v. City of Niagara Falls</i> (2d Cir. 1995) 65 F.3d 1002, 1017.) Conversely, “if the unsuccessful candidate who was the first choice among minority voters did not receive a ‘significantly higher percentage’ of the minority community’s support than did other candidates . . . , then the latter should also be viewed . . . as minority-preferred candidates.” (<i>Levy v. Lexington Cty.</i> (4th Cir. 2009) 589 F.3d 708, 716; see also <i>Niagara</i> , 65 F.3d at 1018.)
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26		Finally, to ensure that candidates with only tepid minority support do not count in the <i>Gingles</i> analysis, some courts hold that candidates cannot be deemed minority-preferred unless they win at least 50% of the minority group’s votes. (E.g., <i>Niagara</i> , 65 F.3d at 1019; see also <i>Lewis</i> , 99 F.3d at
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1		614 [candidates receiving less than 50% of minority vote deemed preferred only given further evidence].)
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3		Plaintiffs are thus attacking a straw man.
4		Additionally, it is misleading to state that Latino voters had a clear “first” or “second” choice in any election because, as plaintiffs’ experts admit- ted, ballot analysis cannot reveal voters’ order of preference. A Latino voter voting for three candidates may strongly prefer one of them over the other two, but it is impossible to discern as much. (See, e.g., Tr. 774:14-25, 3175:9–3176:26.)
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7		As for plaintiffs’ other authorities and parentheticals:
8		<ul style="list-style-type: none"> • The race of the candidate is irrelevant so long as the candidate is pre- ferred by the minority group at issue. Latino-preferred candidates consistently win Council elections. And even if the race of the candi- date were relevant, it is false that Latino candidates are unable to win election in Santa Monica, as both Tony Vazquez and Gleam Da- vis have done so (in each case multiple times).
9		<ul style="list-style-type: none"> • Plaintiffs omit key language from the sentence in <i>Smith</i> that immedi- ately precedes the one they quote: “black citizens are numerous enough to have a clear majority in a single-member district.” (687 F.Supp. 1310, 1318.) Indeed, that would of necessity be true in each of the Section 2 cases plaintiffs cite, because the first prong of <i>Gingles</i> makes this a prerequisite for Section 2 claims. That fact stands in sharp contrast to the demographic facts here. In this case, it is impos- sible to draw any district in which Latino voters would account for more than 30% of eligible voters.
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16	17:4-21	It is unclear from plaintiffs’ statements or citations and accompanying parentheticals exactly what they mean by a “more holistic approach that accounts for the political realities of the jurisdiction.” The meaning may be revealed by 17:12-16—plaintiffs argue that the Court should take into account the races of the candidates and the order of preference of minority voters, especially where there is “a paucity of serious minority candidates willing to run in the at-large system.”
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20		As discussed above, the City contends that the race of a candidate is ir- relevant to the analysis; what matters is whether the candidate is preferred by voters of the relevant minority group. But the City has proposed a three-step approach to identifying preferred candidates that <i>does</i> account for the order of Latino voters’ preferences.
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23		Plaintiffs cannot show that white bloc voting usually causes the defeat of Latino-preferred candidates identified using this three-step approach be- cause, even if one focuses solely on the seven elections chosen by plain- tiffs because they involved at least one Latino-surnamed candidate, such candidates generally <i>win</i> . Those candidates must be identified in three steps:
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26		Step 1: Which candidates would have won had Latinos been the only voters? Under this rudimentary analysis, it is undisputed that “Latino- preferred” candidates won 73% of the time from 2002 to 2016, and 62% of the time in plaintiffs’ seven cherry-picked elections. (Ex. 1652 at 72,
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Ex. 1653A at 21–30, Tr. 2313:2-10, 2315:23–2316:1 [Dr. Lewis’s ER estimates]; see also Ex. 1652A at 2, Ex. 1653A at 43–47, Tr. 2319:20–2320:6 [Dr. Lewis’s EI estimates]; see also Ex. 272, Ex. 275, Ex. 278, Ex. 281, Ex. 284, Ex. 287, Ex. 290 [Dr. Kousser’s ER estimates].) Two of those Latino-preferred candidates, Tony Vazquez and Gleam Davis, also happen to be Latino.

Step 2: If the candidate who won the most Latino votes was unsuccessful, was Latino support for that candidate “significantly” higher than for other Latino-preferred candidates? This analysis eliminates seven candidacies in plaintiffs’ seven favored elections:

1994: none eliminated (three candidates, including Vazquez, have point estimates over 100%; for the sake of simplicity and consistency, and to give plaintiffs the benefit of any doubt, all point estimates taken from Dr. Kousser’s analysis)

1996: Bloom (52%) eliminated, as three candidates have point estimates near or above 100%

2002: O’Connor eliminated (Aranda arguably wins significantly more votes, and loses; but Aranda is not meaningfully or significantly more preferred than McKeown)

2004: Bloom (55%), Hoffman (40%), and Genser (39%) eliminated because Loya wins a significantly higher share of Latino votes (106%) and loses

2008: none eliminated (top four candidates have point estimates between 21% and 55%)

2012: none eliminated (Latinos’ top four candidates all win)

2016: O’Day and Davis eliminated (de la Torre and Vazquez win a significantly higher share of votes, and de la Torre loses) (Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290)

Step 3: Disregard candidates who earned too few Latino votes. This removes Piera-Avila, Bloom, and Rubin in 2008 (who all fell short of the 50% threshold—at least under Dr. Kousser’s estimates, but not, in the case of Bloom, under Dr. Lewis’s). (Ex. 284.)

Thus, in the seven elections involving Latino-surnamed candidates on which Plaintiffs have relied, the Latino-preferred candidates are: Vazquez, O’Connor, and Finkel in 1994; Feinstein, Olsen, and Genser in 1996; Aranda and McKeown in 2002; Loya in 2004; Genser in 2008; Vazquez, O’Day, Winterer, and Davis in 2012; and de la Torre and Vazquez in 2016. (Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290.)

Next, the Court must ask whether any of these candidates were defeated by white bloc voting. At least one losing candidate, Tony Vazquez in 1994, was not. Whites did not vote cohesively as a bloc; they split their votes almost evenly across their top five candidates. Vazquez was (by point estimates) whites’ third choice—meaning that if whites had been the only voters, Vazquez would have *won*. (Ex. 272 [point estimate of white support for Vazquez third-highest, at 34.9%]; Tr. 1337:10-25, 2308:11-16 [if only Latinos had voted, Vazquez, Finkel, and O’Connor would have won]; Tr. 1339:24–1340:25, 2309:17-26, 2312:2-13, 3053:23–3054:19 [no statistically significant difference in white vote for

Holbrook, Ebner, Vazquez, and Finkel]; Tr. 3053:9-22 [no statistically significant difference in Latino vote for O'Connor, Vazquez, and Finkel].) He lost not because of white bloc voting, but because he attracted scarcely any votes from Asian and African-American voters (point estimates of - 209.4 and 19.2, respectively). (Ex. 272.) Vazquez's defeat is thus not evidence of legally significant RPV. (*Nipper v. Smith* (11th Cir. 1994) 39 F.3d 1494, 1533 ["to be actionable, the electoral defeat at issue must come at the hands of a cohesive white majority"].) Analyzed properly—i.e., both horizontally *and* vertically—Dr. Kousser's tables show that just 3 of 16 Latino-preferred candidates were even arguably defeated by white bloc voting in the past 22 years: Aranda (2002), Loya (2004), and de la Torre (2016). (Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290.) And for reasons explained elsewhere in these objections (in response to 12:3–5 & fn. 10), which are incorporated by reference here, the Court should disregard de la Torre's defeat as a "special circumstance." That is far from "usual" defeat "at the hands of a cohesive white majority."

In addition to being wrong, plaintiffs' argument, even if accepted, would not assist them. Plaintiffs cannot show usual defeat on account of white bloc voting even if the Court accepts their position that it must consider the race of the candidates and narrows its focus not just to the elections selected by plaintiffs, but to the Latino-surnamed candidates who ran in those elections. Alvarez, Gomez, and Duron were not Latino-preferred, and voting for Alvarez and Duron was not racially polarized in any event. (Ex. 275 [Alvarez]; Ex. 287 [Gomez and Duron].) Vazquez won twice, and was not defeated by white bloc voting in 1994. Even if the Court does not discount Piera-Avila or de la Torre, plaintiffs have shown the defeat of a Latino-surnamed candidate through white bloc voting at most four of ten times. (Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290.) Dr. Kousser admitted that if, as the law requires, plaintiffs must prove *both* that voting was racially polarized and that the Latino-preferred candidates usually lost as a result, then plaintiffs fall short of that standard. (Tr. 1324:4-19, 1326:7–22, 1353:19–1355:7.) This is dispositive. (E.g., *Askew v. City of Rome* (11th Cir. 1997) 127 F.3d 1355, 1381; *Perez v. Abbott* (W.D.Tex. 2017) 253 F.Supp.3d 864, 899.)

Finally, plaintiffs have yet to define what a qualifies a candidate as "serious," and how "seriousness" factors into the CVRA analysis, which makes any commentary on "seriousness" irrelevant. Nor, for that matter, have they identified any record evidence demonstrating that Latinos are somehow put off of running for City Council under the present at-large system, as they appear to imply. This commentary and the *Westwego* citation are therefore irrelevant.

17:22–25

The City agrees that a minority group can prefer a non-minority candidate. Although plaintiffs concede as much here, they do not account for that possibility in the rest of their analysis, focusing exclusively on the performance of Latino or Latino-surnamed candidates.

The City agrees that Latinos can prefer more than one candidate in a multi-seat plurality at-large election, but plaintiffs again do not account for that possibility in the rest of their analysis, in which they appear to

1		state that only one candidate was preferred in each election they identify as relevant.
2		As noted above in response to 16:13–17:4 and 17:4-21, which objections
3		are incorporated by reference here, plaintiffs are attacking a straw man.
4		The City set out a very clear three-part test for identifying Latino-preferred candidates. That test is consistent with federal case law that is incorporated in the CVRA.
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6	17:25–18:1	The City here incorporates by reference its objections concerning the ambiguity and relevance of “seriousness.” Those objections were noted, among other places, in response to 11:2-8 and 17:4-21.
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8		The City also here incorporates by references its objections to plaintiffs’ inaccurate statements that Latino candidates “have been overwhelmingly supported by Latino voters, receiving more votes from Latino voters than any other candidates,” and that despite such support, “those candidates generally still lose.” Those objections were noted, among other places, in response to 8:1-4.
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11		Finally, to the extent that plaintiffs are suggesting that there were “unusual circumstances” in any election—presumably a variant on the phrase “special circumstances” from the third precondition in <i>Gingles</i> —plaintiffs have waived any such argument by not raising it in their closing briefing. The City noted such a waiver in its own closing brief (p. 8, fn. 8).
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15	18:1-5	The full <i>Gingles</i> standard—that is, the three preconditions—is set forth on pages 48 through 51 of the Supreme Court’s opinion. When courts cite <i>Gingles</i> , and they often do, they almost always cite the preconditions written on those pages. Courts do not cite the language quoted here by plaintiffs in an effort to lighten their burden. In fact, of the 840 cases citing <i>Gingles</i> , only two quote this language—one in a concurring opinion and the other in a 16-line block quote. The Court should, as all other courts do, follow the <i>Gingles</i> preconditions as set out in pages 48 through 51, along with the federal cases following <i>Gingles</i> that operationalized the preconditions and answered many of the questions left unresolved by <i>Gingles</i> .
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21		Further, the quotation is misleading, because it suggests that the Court should confine its analysis to those candidates who are themselves “black.” But Justice Brennan clarified what he meant by “black candidate” in the portion of his decision joined by a plurality of the Court—that it was a kind of shorthand used “as a matter of convenience,” and that what really matters is “the <i>status</i> of the candidate as the <i>chosen representative of a particular racial group</i> , not the race of the candidate.” (478 U.S. at 68.)
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Section III.C: “The Qualitative Factors Further Support a Finding of Racially Polarized Voting and a Violation of the CVRA.” (page 18, line 6 through page 21, line 6)

The CVRA makes certain additional factors potentially, but not necessarily, relevant to the liability analysis. None of those factors supports liability in this case.

First, plaintiffs have not proven a history of discrimination in Santa Monica. Instead, they have attempted to incorporate by reference the findings of a 30-year-old opinion concerning Los Angeles County generally.

Second, the City's electoral system is free of all the electoral devices that have in other municipalities sometimes resulted in or at least contributed to the under-representation of minorities, including a majority-vote requirement, designated posts, and off-cycle elections.

Third, although plaintiffs rely on the Census to demonstrate that white residents are generally better-educated and higher-earning than Latino residents—a trend not unique to Santa Monica—plaintiffs have not demonstrated any connection between such disparities and Latinos’ ability to participate in the political process. To the contrary, City elections are open to all comers, and candidates have been able, irrespective of their own race or ethnicity, to raise money and spread awareness of their campaign platforms.

The City’s elections are notably free of “racial appeals.” Plaintiffs cite a 1994 *Los Angeles Times* article that is not in evidence. The only record evidence of any other such appeal cited by plaintiffs is an allegation by plaintiff Maria Loya that in 2004 she was asked whether she was interested in representing all of Santa Monica or only Latinos. Even if this self-serving assertion were true, it would not demonstrate any pattern of racial appeals sufficient to be of any probative value, especially in comparison to the recent repeated success of Latino and other minority candidates in City Council, Rent Control Board, School Board, and College Board elections, as well as plaintiffs’ own expert’s conclusion that an election in the 1970s involving multiple candidates of color was free of any racial appeals. (In that year, an African-American was elected to the Council, and a Latino was elected to the School Board.)

1 Finally, the City has been consistently supportive of and responsive to its Latino residents.
2 More than most cities across the country, the City of Santa Monica actively promotes the welfare of its
3 residents, offering a wide range of financial, civic, and social programs. Many of those programs,
4 including the City's strong commitment to rent control and affordable housing, are aimed at maintain-
5 ing the City's diversity and ensuring that residents are not forced to move on account of rising rents.

6 Plaintiffs contend that the City has been inadequately responsive to Latinos because it has
7 "placed" many "elements of the city that most residents would want to put at a distance," including
8 "the freeway" and "a park that continues to emit poisonous methane gas," in the Pico Neighborhood.
9 This rhetoric is both false and dangerous in many respects. As an initial matter, the Pico Neighborhood
10 is not a proxy for Latinos. Approximately two of every three Latino residents in Santa Monica live
11 outside of the Pico Neighborhood, and the largest group within the Pico Neighborhood remains non-
12 Hispanic whites. Second, even if the Pico Neighborhood were a proxy for Latinos, the City has spent
13 enormous sums and devoted great effort to beautifying and otherwise improving that neighborhood,
14 including by renovating Virginia Avenue Park and opening the Pico Library. Third, and perhaps most
15 importantly, plaintiffs' stories about "undesirable elements" are not supported in the record and are
16 downright false. For example, the City did not control the placement of the 10 freeway or the train
17 maintenance yard, and methane gas in Gandara Park is not dangerous or poisonous, but closely treated
18 and monitored in accordance with all applicable state and federal regulations. Indeed, that there is
19 methane in the park at all is a function not of any decision to burden a particular neighborhood or group
20 of residents, but of a historical accident. Before there were any residences in the area, that land was
21 devoted to a large clay mine and brick plant. The mine was later filled in with construction waste—
22 again before the area turned residential.

Objectionable portion of PSOD	Specific objections/responses
18:14-17	The City disagrees that any of these factors "support[s] a finding of racially polarized voting in Santa Monica and a violation of the CVRA. In each case, plaintiffs' evidence fails to prove their point and, in any event bears no causal relationship to Latinos' participation in the political process.

18:17–19:2	The argument that plaintiffs need not prove a history of discrimination in this case, which concerns the City of Santa Monica, because a history of discrimination was proven almost 30 years ago in another case concerning the County of Los Angeles is not only wrong, but absurd. Plaintiffs give the Court no reason to engage in what amounts to nonmutual offensive collateral estoppel. That Santa Monica is located within L.A. County does not mean it shares the practices and attitudes of other municipalities within that county. Moreover, forcing Santa Monica to change its election practices based on discriminatory practices 30 years ago in Los Angeles County would make no sense.
19:2-7	Plaintiffs presented no evidence of a history of official discrimination in Santa Monica. Their only City-specific evidence was that the beach was once segregated—but that was by tradition, not law. (Tr. 3904:14-24.) Plaintiffs introduced no evidence of racial covenants <i>in Santa Monica</i> , which have not been legally enforceable for 70 years in any event. (<i>Shelley v. Kraemer</i> (1948) 334 U.S. 1.) And the City was not responsible for a DOJ repatriation program or a <i>statewide</i> English-literacy requirement. Finally, Proposition 14 was not a pure test of racial attitudes, as plaintiffs suggest. As noted in one contemporary article by Eleanor Fulkerson, the President of the Fair Housing Council of Santa Monica, Proposition 14 was passed in large part thanks to misleading advertising that appealed to voters on non-racial grounds: “In a well-financed campaign, using demagogic appeal to freedom and property rights, the public can be led astray.” (Ex. 1817 at 1462; see also Tr. 1575:8–1576:18.) Ms. Fulkerson and others in Santa Monica supported fair housing in general and the Rumford Act in particular. (<i>Ibid.</i>) Further, Dr. Kousser did no regression analysis on Proposition 14 to determine whether there was any correlation between support for Proposition 14 and support for at-large elections. (Tr. 1574:3-21.) Nor was Dr. Kousser aware of any member of the Santa Monica City government supporting Proposition 14. (Tr. 1575:4-10.)
19:10-11	The City has stressed that fact its elections are free of the devices that have been found to dilute minority votes in other jurisdictions because that fact demonstrates that the City’s electoral system is that much more open and inclusive. All of the dilutive mechanisms that the City’s electoral system could have, but does not—for example, it does not use designated posts, prohibit bullet voting, require a majority of votes to win, or hold elections except at the same time as gubernatorial and presidential elections—cast doubt on plaintiffs’ assertion that the City’s elections were designed to dilute Latino voting power or have had that effect.
19:12-16	Plaintiffs did not introduce at trial, and have not identified in the PSOD, any evidence that the City’s staggered elections have diluted minority voting power. Citing a case observing that staggered elections “may have a discriminatory effect under some circumstances” is not the same as proving it based on evidence in this case. Further, there are sound, non-discriminatory reasons to stagger elections—e.g., reducing confusion and uninformed decision-making associated with voting for seven candidates at once, and giving voters the opportunity to make their voices heard every two years instead of every four. (Ex. 127 at 25, Tr. 1701:18-24, 3594:25–3595:4 [concerns, including on the part of the Charter Review Commission, about City holding elections only every four years]; Tr.

	3804:3-6 [confusion]; see also Tr. 2886:22-24 [most cities stagger their elections].)
19:20–20:4	<p>Plaintiffs’ generic assertions about education and income disparities do not demonstrate that Latinos’ participation in the political process is hindered. The barriers to entry in local politics are low, and the City provides resources to all candidates. (E.g., Tr. 4319:21–4322:3 [running requires pulling papers, paying a \$25 fee, and securing 100 signatures, and the City provides different ways “for people to get their message out for free,” including through the City’s website and a spot on public-access TV].) Even if Latinos are on average less wealthy than whites, there is no evidence that Latino candidates can raise money only or principally from other Latinos. Latino candidates have raised large sums of money in Council and other elections, and many have won. (E.g., Tr. 196:20-22 [plaintiff Maria Loya spent \$34,000 on a College Board campaign]; Ex. 1202, Tr. 2509:23-26 [Oscar de la Torre spent between \$14,000 and \$35,000 on each of his School Board campaigns]; Tr. 2710:11-15 [Craig Foster spent \$93,000 on a School Board campaign]; Tr. 2710:16-26 [Nimish Patel spent a similar amount on his own School Board campaign]; Tr. 2711:2-4 [“typical” amounts spent on School Board campaigns are \$40,000 to \$50,000]; Ex. 1387 at 3 [de la Torre victorious in 2002]; Ex. 1389 at 3 [Maria Leon-Vazquez, Jose Escarce, and Margaret Quinones-Perez victorious in 2004]; Ex. 1390 at 4 [de la Torre victorious in 2006]; Ex. 1391 at 3 [Leon-Vazquez, Escarce, and Quinones-Perez victorious in 2008]; Ex. 1392 at 3–4 [de la Torre and Gleam Davis victorious in 2010]; Ex. 1393 at 3 [Leon-Vazquez, Escarce, Tony Vazquez, and Davis victorious in 2012]; Ex. 1394 at 4 [de la Torre and Steve Duron victorious in 2014]; Ex. 1557 at 3–8, 15–21 [Quinones-Perez, Vazquez, and Davis victorious in 2016].) And none of the education or income disparities to which plaintiffs point would be any different if the City had used districts for Council elections. The achievement gap, for example, has nothing to do with the Council. The School Board—which has had between 1 and 3 Latino members, including de la Torre, for the last 25 years—has exclusive authority over City schools. (Tr. 4209:6-15, 4315:12–4316:13 [Council does not operate schools]; Ex. 1399 at 3 [Margaret Franco reelected in 1996]; Ex. 1397 at 3 [Escarce elected in 2000]; Ex. 1387 at 3 [de la Torre elected in 2002]; Ex. 1389 at 3 [Escarce reelected, Leon-Vazquez elected in 2004]; Ex. 1390 at 4 [de la Torre reelected in 2006]; Ex. 1391 at 3 [Escarce and Leon-Vazquez reelected in 2008]; Ex. 1392 at 3 [de la Torre reelected in 2010]; Ex. 1393 at 3 [Leon-Vazquez and Escarce reelected in 2012]; Ex. 1394 at 4 [de la Torre reelected in 2014]; see also Tr. 4209:16-25 [noting people of color on School Board].) The Court should disregard plaintiffs’ speculation that any achievement gap “may further contribute to lingering turnout disparities.”</p>
20:6-15	<p>The <i>Los Angeles Times</i> article and the quote it contains were never admitted into evidence and should not appear in the Court’s Statement of Decision. Moreover, the racist appeal cited in the article came in the 1994 election, more than 24 years ago; 1994 also saw the City select as Mayor Pro Tem an Asian-American Councilmember who had been elected in 1992.</p>

1		Plaintiffs suggest that there is a history of more recent racial appeals, but
2		give only a single example—from the plaintiff, divorced from any con-
3		text. Plaintiffs’ limited allegations of racial appeals are outweighed by
4		the lack of evidence of any such appeals in any other elections, including
5		but not limited to Vazquez’s 1990, 2012, and 2016 victories, as well as
6		Nat Trives’s 1971 and 1975 victories. (E.g., Tr. 1581:3-8, 3671:18-25,
7		Ex. 1315 at 21 [no racial appeals for defeat of Prop. 3 in 1975]; Tr.
8		3672:12-23 [Outlook endorsed multiple minority candidates in 1975, in-
9		cluding Trives]; Tr. 4041:11-16 [Jara recalled no racial appeals in the
10		2004 election cycle].) It would be unreasonable to conclude that a few
11		comments allegedly made 15 years ago to a single Latino candidate (or
12		an advertisement run more than 24 years ago) would cause other Latinos
13		to think twice about running for office; indeed, there is no record evidence
14		that any Latinos other than plaintiff herself heard such comments. More-
15		over, the record is replete with more recent victories by Latino and other
16		minority candidates in elections for City Council (Vazquez in 2012 and
17		2016; and Davis in 2010, 2012, and 2016), Rent Control Board (Duron in
18		2014), School Board (de la Torre in 2006 2010, 2014, and 2018; Leon-
19		Vazquez in 2004, 2008, and 2012; and Escarce in 2004, 2008, and 2012),
20		and College Board (Quinones-Perez in 2004, 2008, and 2016; Barry Snell
21		in 2014 and 2018; and Sion Roy in 2018). (With respect to the 2018
22		election results, which postdated the trial, please refer to the City’s con-
23		temporaneously filed Request for Judicial Notice.)
24	20:17–21:6	Plaintiffs’ evidence of a supposed lack of responsiveness ignores both
25		historical context and the fact that the Pico Neighborhood is not a proxy
26		for Latinos; two-thirds of Latinos live outside of that neighborhood, and
27		the largest group in the Pico Neighborhood remains non-Hispanic whites.
28		(Tr. 1936:25–1937:2; 375:19-25.)
		<i>Methane and City Yards:</i> The land where Gandara Park and the City
		Yards are located was first devoted to industrial use (clay-mining and
		brickmaking) well over a century ago, long before residences were built
		in the area. (Tr. 4182:19–4185:1 [describing history of area], 4435:18-
		23 [“The reason that those items happen to be in the Pico neighborhood
		doesn’t have anything to do with a decision that was made about let’s try
		and impose a burden on one particular neighborhood. That was an indus-
		trial area where it was appropriate to do that kind of work.”].) And
		plaintiffs’ narrative about “poisonous” gas is irresponsible and false. The
		City has for decades hired experts to oversee a gas-abatement program
		and provide regular reports to the Council and regulatory authorities; the
		City has remained in compliance with all applicable regulations. (Tr.
		4197:26–4202:21 [City has “continually monitor[ed] the park” through
		expert consultants “for at least 20 years”; experts operate and maintain
		abatement systems and provide regular reports to the Council and regula-
		tory authorities; City has never been out of compliance with regulations];
		see also Tr. 3470:28–3471:4, 3472:20-22 [“regular monitoring”]; Tr.
		3474:6-16 [Council’s role is to provide “policy oversight,” not to hire
		staff and directly oversee monitoring].)
		<i>Train maintenance yard:</i> The placement of the Expo maintenance facility
		in the same historically industrial area was out of the Council’s hands and
		replaced another private commercial yard at the same location. (Tr.
		4293:10-18 [Metro directly acquired former Verizon maintenance yard,

1 and “once they made the decision to do that private deal, there was nothing the City could do”].)

2
3 *Hazardous waste collection and storage:* Residents’ waste is brought to
4 the City Yards, but those materials are then made safe for transfer by a
5 private company and transferred out of the City. (Tr. 4150:12–4151:27,
6 4152:10–4153:6.) There is no long-term hazardous-waste-storage facility
7 in Santa Monica. (Tr. 4160:3-18.) The City’s collection of hazardous
8 waste, at residents’ request, and safe transfer out of the City are performed
9 in order to improve the safety of all City residents.

10 *Freeway:* The City did not decide where to locate the 10 freeway. The
11 State of California did. Further, the Pico Neighborhood is not the only
12 neighborhood burdened by its proximity to a freeway. The Pacific Coast
13 Highway runs along the west side of the City and an entirely different set
14 of neighborhoods and people than the 10 freeway. (See Tr. 3597:24-
15 28.) Further, plaintiffs’ argument that through the freeway the City has
16 imposed a particularly heavy burden on minorities in the Pico Neighborhood
17 is demonstrably false. Not only does City Councilmember Terry
18 O’Day live in the Pico Neighborhood, a mere 150 feet from the freeway,
19 but City Hall itself is within 100 feet of the freeway. (See Tr. 3599:10-
20 26.)

21 *Commissions:* Plaintiffs also have not shown that Latinos have *applied*
22 *and been rejected* from positions on any commissions—an element of a
23 prima facie case of racial discrimination in hiring. (*Tex. Dep’t of Comm.*
24 *Affairs v. Burdine* (1981) 450 U.S. 248, 253 & fn. 6.)

25 *More evidence on the Pico Neighborhood:* Finally—and to the limited
26 extent that Pico Neighborhood-related evidence is relevant—the Pico
27 Neighborhood does not shoulder all the City’s “burdens.” There are other
28 City yards in other neighborhoods, including a 7-acre bus lot downtown
and yards on the PCH, in Mid-City, and in Sunset Park, as well as fire-
houses throughout the City. (Tr. 3598:11–3599:5.)

Plaintiffs also fail to mention the tens of millions of dollars that the City
has invested in Pico in recent years (e.g., on projects such as Virginia
Avenue Park, Pico Library, Ishihara Park, MANGo, and Memorial Park,
as well as City-sponsored vocational and educational programs). (Tr.
234:5–235:22, 2620:13–2625:10, 3457:3-9, 3463:5-16, 3464:3-10,
4027:24–4029:18, 4274:1–4276:13, 4283:24–4284:27, 4285:24–4288:27
[Virginia Avenue Park]; Tr. 228:24–229:28, 2626:21-24, 4276:14–
4283:18, Ex. 1841 [Pico Library]; Ex. 1661 at 2–5, Tr. 226:27–227:15,
228:21-23, 2635:18-24, 2638:21-28, 2636:8-10, 2637:12–2639:22 [Ishi-
hara Park]; Tr. 3399:15–3402:8, 4258:17–4262:25 [MANGo]; Tr.
3458:2-13 [Memorial Park]; Tr. 2633:11–2634:24, 4166:24–4167:15
[vocational programs at City Yards].)

Plaintiffs also overlook the many City-funded programs that benefit
lower-income Pico residents, including Latinos and non-Latinos, (e.g.,
affordable housing, strict rent-control laws, and direct assistance to low-
income tenants). (Tr. 3564:15–3565:5 [strategic planning process to
maintain diversity through affordable housing, rent control, and direct
subsidies]; Tr. 4208:16–4209:5 [direct-subsidy program]; Ex. 1922, Tr.

	4218:1–4221:16 [rent control and affordable housing]; see also Tr. 3563:27–3564:7, 4213:5–4217:2 [goal is to “reduce the pressure on existing housing units” with new construction that does not displace current residents].)
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Section III.D: “The At-Large Election System Dilutes the Latino Vote in Santa Monica City Council Elections.” (page 21, lines 7-22)

It was plaintiffs’ obligation to prove that the City’s current electoral system dilutes the voting power of Latinos. Put differently, plaintiffs needed to show that some alternative electoral system would allow Latinos to elect candidates of their choice. They failed to do so, because Latino voters are too few in number and too integrated throughout the City for either a districted system or a different at-large system to enhance their voting power. Indeed, plaintiffs’ preferred purported remedy, a district in which Latinos account for just 30 percent of Latino voters, would put Latino voters in precisely the situation in which they find themselves now—reliant on “crossover” voters from other racial and ethnic groups to support candidates of their choice for those candidates to succeed.

Plaintiffs’ own expert unsurprisingly could not identify a single judicially created district where the relevant minority group’s share of eligible voters was as low as in plaintiffs’ proposal. Because neither that proposal nor any other alternative electoral system would enhance Latino voting strength, plaintiffs have not satisfied the CVRA.

Objectionable portion of PSOD	Specific objections/responses
21:9-10	Vote dilution is a separate element of a CVRA claim. A public entity violates the CVRA only if its at-large method of election “ <i>impairs</i> the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, <i>as a result of the dilution</i> or the abridgment of the rights of voters who are members of a protected class.” (§ 14027, italics added.) Courts interpreting similar language in Section 2 of the FVRA require proof of <i>harm</i> (vote dilution) and <i>causation</i> (a connection between the harm and the electoral system). (E.g., <i>Gingles</i> , 478 U.S. at 48, fn. 15; <i>Gonzalez v. Ariz.</i> (9th Cir. 2012) 677 F.3d 383, 405; <i>Aldasoro v. Kennerson</i> (S.D.Cal. 1995) 922 F.Supp. 339, 369, fn. 10.) California courts have stated, but not yet held, that the CVRA similarly demands proof of vote dilution caused by an election system. (<i>Rey v. Madera Unified Sch. Dist.</i> (2012) 203 Cal.App.4th 1223, 1229; <i>Jau-regui v. City of Palmdale</i> (2014) 226 Cal.App.4th 781, 802; <i>Sanchez v. City of Modesto</i> (2006) 145 Cal.App.4th 660, 666.)

1	21:10-22	First, the standard proposed by the City—“that some alternative method of election would enhance Latino voting power”—is the appropriate standard.
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3		To prove vote dilution, a plaintiff must show that a protected class would have greater opportunity to elect candidates of its choice under some other electoral system, which serves as a “benchmark” for comparison. (See, e.g., <i>Reno v. Bossier Parish Sch. Bd.</i> (1997) 520 U.S. 471, 480; <i>Holder v. Hall</i> (1994) 512 U.S. 874, 880 (plurality); <i>Gingles</i> , 478 U.S. at 50, fn. 17.) “[I]n order to decide whether an electoral system has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it ‘should’ be for minority voters to elect their preferred candidates under an acceptable system.” (<i>Gingles</i> , 478 U.S. at 88 (O’Connor, J., concurring).) See also fn. 4 above.
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9		The “protected voting group” should have “a voting opportunity that relates favorably to the group’s population in the jurisdiction for which the election is being held.” (<i>Smith v. Brunswick Cty., Va., Bd. of Supervisors</i> (4th Cir. 1993) 984 F.2d 1393, 1400.) But the key word is “opportunity”—“while a plan must provide a meaningful ‘opportunity to exercise an electoral power that is commensurate with its population,’ that is not the same as a guarantee of success”; to the contrary, “a necessary part of equal participation is the possibility of a loss.” (<i>United States v. Euclid City Sch. Bd.</i> (N.D. Ohio 2009) 632 F.Supp.2d 740, 752.) “[T]he ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race.” (<i>Johnson v. De Grandy</i> (1994) 512 U.S. 997, 1014, fn. 11.)
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15		Where comparison to any reasonable benchmark reveals that a protected class’s votes are <i>not</i> being diluted—i.e., where that class <i>already has</i> a voting opportunity that relates favorably to its population—there is no legal requirement to jettison an at-large system; “there neither has been a wrong nor can be a remedy.” (<i>Emison v. Growe</i> (1993) 507 U.S. 25, 40–41.) Levitt agreed as much. (Tr. 3080:21-26, 3085:28–3086:9.) Any requirement to abandon an at-large method of election despite a lack of vote dilution would violate the federal constitution. (See, e.g., <i>Bartlett</i> , 556 U.S. at 21–22; U.S. Const., am. XIV.)
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20		Second, the PSOD does not explain how any evidence presented by plaintiffs demonstrates that an alternative electoral system would enhance Latino voting strength. A conclusory assertion is not enough. Plaintiffs must prove the existence of vote dilution, and they have not done so, because they have not identified any alternative method of election that would enhance Latino voting power.
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24		The parties agree it is impossible to draw a majority-Latino district in the City. (Tr. 395:19–396:6 [Latino CVAP in Mr. Ely’s proposed “Pico” district is 30%]; Tr. 1931:1-1935:21 [arithmetic upper limit of Latino share of CVAP in any district, however configured, is well under 50%].) Plaintiffs have argued that the CVRA, unlike federal law, permits plaintiffs to show vote dilution in some other way. Their expert, David Ely, proposed a “Pico Neighborhood District” with a Latino CVAP of 30%. (Tr. 283:6-12 [Mr. Ely relying on CVAP figures]; Ex. 162, Ex. 163, Ex. 1209 at 10, Tr. 288:15-22 [Latino CVAP in Mr. Ely’s proposed district is 30%].) He
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1 estimated that in three elections (1994, 2004, and 2016), a Latino candi-
2 date would have won the most votes in that district. (Ex. 1209 at 12–14
3 [Ely declaration explaining analysis]; Ex. 164, Tr. 290:24–291:6 [1994];
4 Ex. 166, Tr. 292:13–293:2 [2004] Ex. 168, Tr. 294:27–295:26 [2016].)

5 There are several major problems with this analysis:

6 (1) There is no precedent in case law or expert practice for Ely’s
7 methodology. The Latino CVAP of his proposed district is just over
8 half the bare majority required for a federal claim to be cognizable.
9 Because this figure is so low, Ely could not presume that Latino vot-
10 ers would be able to elect candidates of their choice; he had to invent
11 a new test—estimating vote totals for each candidate in his district
12 under three calculation methodologies. (Ex. 1209 at 12–13; Tr.
13 289:14–290:23.) He admits that this test has no value in determining
14 who would have actually won in his proposed district. (Tr. 440:4-
15 12, 459:20–460:7; see also Tr. 1614:23-25 [Dr. Kousser admitting
16 that how voters would vote in a districted system is uncertain].)
17 Among other things, the candidates would be different in a districted
18 election, because residency within the district would be a prerequisite
19 of candidacy, and it would likely be necessary to earn a majority of
20 votes to win, such that runoffs might become necessary. (Ex. 159
21 [map of Council candidates’ residences]; Tr. 420:12-20, 460:2-7
22 [Mr. Ely familiar with districted systems requiring a majority of
23 votes to win and holding runoffs where no candidate secures a ma-
24 jority on the first ballot]; Tr. 430:18–431:10 [Mr. Ely assumed that
25 candidates would need to reside in the district where they run]; Tr.
26 437:27–438:2, 459:15-19 [candidates would be different in a dis-
27 tricted election because of the residency requirement]; 3100:25-28
28 [Mr. Levitt agreeing that the candidates who run in districted elec-
tions tend not to be the same candidates who run in at-large elec-
tions].) As a result, for example, Ely’s conclusion about the 1994
election is meaningless because Vazquez did not live in the proposed
district and therefore could not have won there. (Tr. 3097:15–
3098:13.)

(2) Latino CVAP in the proposed district is far below the 50% thresh-
old of exclusion for a one-seat election; Latinos alone would be un-
able to elect candidates of their choice. (Tr. 3134:4-10.) Further,
Latinos outside the district would be submerged in overwhelmingly
white districts. (E.g., Tr. 1936:25–1937:11, 2942:23–2943:7,
3091:17-23.) Indeed, Mr. Levitt could not identify a single judicially
created district with such low minority CVAP anywhere in the coun-
try. (Tr. 3092:24–3093:15, 3095:3-22.) If the Court were to find a
violation here, this case would be an extreme outlier. Plaintiffs point
to *Georgia v. Ashcroft* to justify the creation of an “influence” district
with minority CVAP as low as 25% (Br. at 24), but that was a *Sec-
tion 5* case, not a *Section 2* case. The Supreme Court has held that
“the lack of [influence] districts cannot establish a § 2 violation.”
(*Bartlett*, 556 U.S. at 25.)

(3) Ely’s opinion is outcome-driven and incomplete. He testified on
direct examination about only *three* elections (1994, 2004, and
2016). His conclusion about the 2016 election is simply wrong; his

own numbers show that the purportedly Latino-preferred candidate, de la Torre, would have *lost* under two of three scenarios to O'Day, who has lived in the Pico Neighborhood for 20 years. (Ex. 1304 at 3; Tr. 451:11-23, 3397:6-13.) (And both lost to Vazquez, who does not live there; districts would have robbed voters of their top choice.) But Ely also analyzed four other elections. On cross-examination, Ely claimed that he omitted those from his opinion because they did not meet one of his criteria—that the Latino candidate must receive at least half the number of votes necessary to win citywide. (Tr. 428:6–429:2, 460:20–463:27, 465:2-15.) In fact, in three of the omitted elections, a Latino candidate *did* receive at least that many votes. (Ex. 1399 at 22 [Alvarez received 8,693, more than half of the 12,713 votes won by the fourth-place finisher, Rosenstein]; Ex. 1387 at 14 [Aranda received 6,579 votes, more than half of the 11,164 votes won by the third-place finisher, Holbrook]; Ex. 1393 at 3 [Vazquez received 11,939 votes—enough to win].) Ely did not include those Latino candidates in his analysis because they did not come in first in his Pico district. (Compare Ex. 1304 [Mr. Ely's seven election analyses], with Ex. 1399 [1996 election results], Ex. 1387 [2002 election results], Ex. 1391 [2008 election results], Ex. 1393 [2012 election results]; Tr. 463:25–464:18 [Alvarez received fifth-most votes in hypothetical district in 1996]; Tr. 465:2–466:10 [Aranda received third-most votes in hypothetical district in 2002]; Tr. 466:22–468:7 [Piera-Avila received seventh- or eighth-most votes in hypothetical district in 2008]; Tr. 468:10–471:8 [Vazquez received second- or third-most votes in hypothetical district, even though he was elected in actual at-large election].) In 2012, for example, although Vazquez won citywide in an at-large election, he would not have received the most votes in Ely's district. (Tr. 468:10–471:8; Ex. 1304 at 2; Ex. 1393 at 3.) In each of the four omitted elections, districts would have changed nothing—the top choices in the district prevailed citywide. (Compare Ex. 1304 [Mr. Ely's seven election analyses], with (a) Ex. 1399 [1996 election results; top three vote-getters in the district are Feinstein, Genser, and Rosenstein, who prevailed citywide]; (b) Ex. 1387 [2002 election results; top two vote-getters in the district are McKeown and O'Connor, who both prevailed citywide]; (c) Ex. 1391 [2008 election results; top four vote-getters in the district are Bloom, Genser, Katz, and Shriver, who all prevailed citywide]; and (d) Ex. 1393 [2012 election results; top four vote-getters in the district are Davis, O'Day, Vazquez, and Winterer, who all prevailed citywide].)

(4) Because plaintiffs are unable to show that districts would enhance Latino voting power, the Court should not overlook the un rebutted evidence that districts would *dilute* the voting power of African-Americans and Asians. (Tr. 3794:23–3795:11, 3796:20–3797:15.) In 5 of the 7 at-large elections that Dr. Kousser studied, African-Americans' top choice was elected; the current system does not dilute their votes. (Ex. 272 [Ebner]; Ex. 275 [Greenberg]; Ex. 278 [Holbrook]; Ex. 284 [Shriver]; Ex. 287 [Davis]; see also Tr. 3800:14–3801:28 [Dr. Kousser left Asians and African-Americans out of his analysis].)

1 Finally, Professor Levitt’s analysis of alternative at-large systems like-
2 wise does not prove vote dilution. His analysis depends not on CVAP,
3 but on Latinos’ share of *actual* voters exceeding the “threshold of exclu-
4 sion” of 12.5% under a destaggered at-large system. (Tr. 2959:8–
5 2960:10, 2978:9-15.) Any group’s ability to meet such a threshold de-
6 pends on its levels of cohesion and turnout. (Tr. 3116:21–3117:2.) Lati-
7 nos account for 13.6% of the City’s CVAP, barely more than the thresh-
8 old of exclusion if they *all* show up to vote *and* all vote cohesively. But
9 historical Latino cohesion and turnout are nowhere close to 100%. (Ex.
10 1652 at 21 [in no election are more than 9 percent of the voters Latino,
11 and Latinos never comprise as much as 45 percent of the voters in any
precinct in any election]; Ex. 1796, Tr. 3757:2-11 [falloff between Latino
population and registered voting population is 60 percent]; see also, e.g.,
Ex. 278 [top three point estimates of Latino support in 2002 range from
58.6% to 82.6%]; Ex. 284 [top four point estimates of Latino support in
2008 range from 20.9% to 55.1%]; Ex. 287 [top four point estimates of
Latino support in 2012 range from 50.2% to 92.7%].) Courts analyzing
at-large alternatives presume minority turnout of 2/3. (E.g., *Euclid City
Sch. Bd.*, 632 F.Supp.2d at 761–770.) Here, that same presumption would
predict Latinos’ share of actual voters to be 9%, well under the 12.5%
exclusion threshold.

12
13 ***Section IV: “The CVRA Is Not Unconstitutional.” (page 21, line 23 through page 25, line 3)***

14 Plaintiffs defend the facial constitutionality of the CVRA. But the City has never argued that
15 the CVRA is facially unconstitutional. Rather, the City has argued that it would be unconstitutional as
16 applied on the facts of this case were the Court to impose a remedy (an order forcing the City to change
17 its election system) because that remedy would be premised solely on race (an effort to increase Latino
18 voting power) in the absence of any showing of a compelling interest that would justify it. The U.S.
19 Constitution forbids the imposition of any predominantly race-based remedy unless that remedy is nar-
20 rowly tailored to serve a compelling governmental interest. Courts have assumed without deciding that
21 governments have a compelling interest in remedying vote dilution. Here, there is no evidence of vote
22 dilution: districts would not enhance the voting strength of Latinos within any purportedly remedial
23 district, and would submerge other Latinos—and other minorities—in overwhelmingly white districts.
24 Similarly, no alternative at-large voting system would enhance Latino voting strength. The Constitu-
25 tion precludes imposing a race-conscious “remedy” that would overturn the City’s choice of electoral
26 system while curing no ills and creating new ones.

Objectionable portion of PSOD	Specific objections/responses
21:25-27	<p>The <i>Sanchez</i> court did not hold that <i>Shaw</i> is inapplicable to CVRA cases. To the contrary, the court noted that “the <i>Shaw-Vera</i> line of cases reveals the potential for unconstitutional applications of the statute” (145 Cal.App.4th at 680)—specifically, in the case of “districting plans that use race as the predominant line-drawing factor.” (<i>Id.</i> at 683.) The court in <i>Sanchez</i> rejected a <i>facial</i> challenge to the CVRA. It specifically left open the possibility of as-applied challenges, including those predicated on <i>Shaw</i> and related case law. (See <i>id.</i> at 665 [“The city may, however, use similar arguments to attempt to show as-applied invalidity later if liability is proven and a specific application or remedy is considered that warrants the attempt.”]; see also <i>id.</i> at 690 [leaving for the trial court to determine whether “the particular remedy under contemplation by the court, if any, conform[s] to the Supreme Court’s vote-dilution-remedy cases”].)</p>
22:2-9	<p>Plaintiffs are attacking a straw man. The City has never argued, as did the appellee in <i>Sanchez</i>, that the CVRA is facially unconstitutional, whether because it depends on racial classifications or otherwise. The City has instead argued that the statute would be unconstitutional <i>as applied</i> to the facts of this case if the Court were to find liability and impose a remedy notwithstanding the fact that plaintiffs have no remediable injury. The Court would be both ordering a change in election system in an ineffective effort to enhance Latino voting strength and endorsing the racial classification of voters—the drawing of a purportedly but not actually remedial district purely for purposes of maximizing the number of Latino voters within it—without advancing what courts have assumed to be a compelling justification for engaging in such classifications, the remediation of vote dilution pursuant to voting-rights statutes. As discussed above, plaintiffs have failed to demonstrate any vote dilution because they have not shown either any legally significant racially polarized voting or that the current at-large election system disadvantages Latino voter as compared to any alternative election system that could be used in Santa Monica. Moreover, districts would not enhance the voting strength of Latinos within the Pico district and would submerge other Latinos (and other minorities) in overwhelmingly white districts. The Constitution precludes imposing a race-conscious “remedy” that would overturn the City’s choice of electoral system while curing no ills and creating new ones.</p> <p>Also, it is unclear why plaintiffs are citing the City’s motion for summary judgment. To the extent that they are citing that motion, they should address not the City’s recitation of background law, appearing on pages 10 through 13, but its argument that plaintiffs’ theory of the case would result in an unconstitutional application of the CVRA, which appears on pages 13 through 19.</p>
22:10–23:3	<p>Plaintiffs focus on whether the configuration of districts is unconstitutionally “bizarre” under <i>Shaw</i>. But the holding in <i>Shaw</i> is not limited to “the expressive harm to voters conveyed by particular district lines.” Such lines are just one means of signaling that a court has trafficked in racial classifications and thereby unconstitutionally wrought stigmatic harm.</p>

1		Here, it would not be the lines themselves, but the fact that the Court drew them at all. The only justification for compelling the City to change its electoral system is an ineffective effort to increase Latino voting strength, and the only reason for drawing the districts proposed by plaintiffs is to maximize the number of Latino voters in the purportedly remedial Pico district. But plaintiffs have failed to demonstrate any vote dilution because they have not shown either any legally significant racially polarized voting or that the current at-large election system disadvantages Latino voter as compared to any alternative election system that could be used in Santa Monica. And their proposed district could not actually be remedial, as its Latino voting population would be far too small for Latino voters to be able to elect candidates of their choice. Accordingly, the Court would have no business imposing any remedy at all, much less a district drawn with the intent of maximizing its Latino voting population.
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8		Further, as noted above, the <i>Sanchez</i> court did not reject the City of Modesto's constitutionality argument because of a distinction between improper district lines and improper adoption of districts, but instead because Modesto, which was pursuing a facial challenge to the CVRA, could not demonstrate that the statute is unconstitutional in every application.
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12	23:5-17	Courts have long assumed, without deciding, that there is a compelling state interest in compliance with Section 2. The same should be true of the CVRA, at least to the extent that the scope of the CVRA is coextensive with that of Section 2. Of course, judicial action is not justified where it would not advance that compelling interest; here, no alternative electoral system would enhance the voting strength of Latino voters, and so there is no basis on which to compel the City to abandon an electoral system long favored by its voters.
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17		Also, plaintiffs' discussion of the rational basis test has no place in the Court's decision. Strict scrutiny applies because the Court would be imposing a remedy (both a forced change in election system to districts and a particular purportedly remedial district) solely for race-conscious reasons.
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20	23:17-23	Plaintiffs here concede that the injury the CVRA was meant to remedy is vote dilution. It is curious, then, that plaintiffs in the same PSOD suggest that vote dilution is not even an element of the statute, and that in prior briefing plaintiffs insisted that racially polarized voting was itself somehow an injury (notwithstanding, among other things, the fact that a districted electoral system harnesses rather than cures such voting). The Court should clarify that vote dilution is indeed an element of the statute, with roots in both Section 14027 and the federal case law from which the CVRA borrows.
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25		Further, for reasons stated in response to, among other things, 21:10-22, which objections are incorporated by reference here, plaintiffs have not proved that the City's at-large electoral system has resulted in vote dilution, and the PSOD is inadequate insofar as it simply asserts that they have. No alternative electoral system—not districts and not some alternative at-large scheme—would enhance Latinos' voting strength.
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23:25-26 & 24:4-19	Federal courts have assumed without deciding that race-conscious remedies are constitutional where all three <i>Gingles</i> preconditions are satisfied. No court has held that such remedies would be constitutional where a plaintiff could not satisfy the first <i>Gingles</i> precondition, as is the case here. Because plaintiffs cannot prove vote dilution, either in the manner called for by the federal courts (the possibility of a constitutionally permissible majority-minority district) or in any other way, satisfying the second and third <i>Gingles</i> preconditions alone would not be an adequate basis on which to conclude that a remedy is narrowly tailored to advance a compelling interest. (What is more, plaintiffs cannot satisfy those preconditions either.) Under plaintiffs' interpretation of the statute, which does not require a showing of vote dilution, even a trivially small but cohesive protected class could satisfy the second and third <i>Gingles</i> preconditions, and thus, according to plaintiffs' theory here, require a court to find liability and impose a remedy. But courts cannot have a compelling interest in imposing "remedies" that do not alleviate any harm, as would be the case with a voting group so small that no alternative electoral system could give it the ability to elect candidates of its choice.
24, fn. 13	Again, courts have assumed without deciding that compliance with the Voting Rights Act is a compelling state interest. Also, the pin cite for <i>Bethune-Hill</i> should be 801, not 802.
24:19–25:3	The CVRA would be unconstitutional as applied in these circumstances if it is interpreted to permit a finding of liability and the provision of a remedy. There is no reason to authorize courts to find liability and impose a remedy where no alternative electoral system could possibly enhance the relevant minority group's ability to elect a candidate of its choice. The cases interpreting Section 2, including <i>Bartlett v. Strickland</i> , hold that a Section 2 plaintiff must demonstrate that it is possible to draw a constitutionally permissible majority-minority district; where it is impossible to satisfy this objective and reasonable benchmark, there is no wrong, and there can be no remedy. It is at least possible that the CVRA liberalizes this requirement, and requires plaintiffs to satisfy some lesser benchmark, but it nevertheless cannot be interpreted to authorize a finding of liability and the provision of a remedy in a case like this one, where it is a demographic impossibility to craft an alternative electoral system that would enhance the relevant minority group's voting strength. Plaintiffs' contention that "if the CVRA generally satisfies strict scrutiny, it a fortiori satisfies strict scrutiny in application here" is ambiguous and a non sequitur. What plaintiffs mean by "generally" is unclear. If they mean that the statute would survive a facial challenge, as it did in <i>Sanchez</i> , then they have proven only that not every application of the CVRA is unconstitutional. That hardly forecloses the possibility that this particular application of the CVRA is unconstitutional. Finally, as addressed at length in the following objections, there is absolutely no evidence of intentional discrimination in this case.

1 **Section V: “The Equal Protection Clause Of The California Constitution.” (page 25, line 4**
2 **through page 26, line 23)**

3 To prevail on their Equal Protection claim, plaintiffs must demonstrate that the City’s at-large
4 electoral system has caused a disparate impact that was intended by the relevant decisionmakers. In
5 other words, constitutional vote-dilution claims are proven in the same way as any other Equal Protec-
6 tion claims—through evidence of disparate impact, causation, and discriminatory intent. Each is nec-
7 essary but insufficient on its own.

8 Disparate impact in an Equal Protection analysis is proven with evidence that a protected class
9 would have greater opportunity under some other method of election. Because the standard for proving
10 vote dilution under Section 2 was intended to be more permissive than the constitutional standard, and
11 because the CVRA is, in turn, at least possibly more permissive than Section 2, failure to prove vote
12 dilution in support of a CVRA claim must, *a fortiori*, mean failure to prove disparate impact in support
13 of a constitutional claim.

14 Whereas a statutory vote-dilution claim depends only on the *results* of an at-large system, a
15 constitutional vote-dilution claim also requires proof that those results were *intended*. The Supreme
16 Court has held that “[d]iscriminatory purpose’ . . . implies more than intent as volition or intent as
17 awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular
18 course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an iden-
19 tifiable group.” (*Personnel Adm’r of Mass. v. Feeney* (1979) 442 U.S. 256, 279.)

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Objectionable portion of PSOD	Specific objections/responses
22 25:6-15	To the extent plaintiffs are arguing that an Equal Protection claim does 23 not require proof of disparate impact or causation, and can instead be 24 premised solely on discriminatory intent, they are simply wrong. Courts 25 have repeatedly held that constitutional vote-dilution claims are proven 26 in the same way as any other Equal Protection claims (e.g., <i>Rogers v.</i> <i>Lodge</i> (1982) 458 U.S. 613, 617; <i>Johnson v. DeSoto Cty. Bd. of Comm’rs</i> (11th Cir. 2000) 204 F.3d 1335, 1343–1346; <i>Cano</i> , 211 F.Supp.2d at 1245) and require evidence of disparate impact, causation, and discrimi- natory intent; each is necessary but insufficient alone. ⁵ (<i>Washington v.</i>

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28 ⁵ The relevant California decisional law tracks federal law. (See *Jauregui*, 226 Cal.App.4th at 800
[“California decisions involving voting issues quite closely follow federal Fourteenth Amendment

Davis (1976) 426 U.S. 229, 239 [disparate impact alone not enough]; *Personnel Adm'r v. Feeney* (1979) 442 U.S. at 273–274, 279 [intent must also be shown]; *Palmer v. Thompson* (1971) 403 U.S. 217, 224 [intent alone not enough]; *Cano*, 211 F.Supp.2d at 1248 [same]; *Johnson*, 204 F.3d at 1345–1346 [impact *and* intent not enough without proof of causation].)

Plaintiffs argument that “modification of the original enactment” cannot “save a provision enacted with discriminatory intent” is also contrary to case law. *McCrory* explains that a subsequent enactment can “cure[] the harm” of past discrimination (*McCrory*, 831 F.3d at 240). And other cases have held that such enactments have succeeded in doing so. (See, e.g., *Johnson v. Governor of Fla.* (11th Cir. 2005) 405 F.3d 1214, 1223–1224 (en banc) [noting *Hunter* “left open” this question and rejecting challenge to Florida statute first enacted in 1868 and reenacted, with no apparent racial bias, in 1968]; *Hayden v. Paterson* (2d Cir. 2010) 594 F.3d 150, 163–169 [doing the same with respect to a similar New York statute that had been reenacted without invidious intent]; see also *Veasey v. Abbott* (5th Cir. 2016) 830 F.3d 216, 232 (en banc) [“the most relevant ‘historical’ evidence is relatively recent history, not long-past history”].)

Section VI: “Defendant’s At-Large Election System Violates The Equal Protection Clause Of The California Constitution.” (page 26, line 24 through page 32, line 17)

Plaintiffs’ intentional discrimination claim largely imploded at trial. It became clear during Dr. Kousser’s cross-examination, and was then crystalized during Dr. Lichtman’s direct examination, that Santa Monica adopted and maintained its current at-large electoral system in order to *benefit* minorities and *enhance* their voting strength—which helps explain why the City’s most prominent minority leaders have consistently supported the at-large method.

Santa Monica adopted the at-large election system in 1914 to replace the district-based system that had been in place since 1906. Plaintiffs have not contended that this initial adoption of the at-large system resulted in or was the result of any discrimination. Between 1914 and 1946, the City was run by three commissioners elected at-large to designated posts—the Commissioner of Finance, the Commissioner of Public Works, and the Commissioner of Public Safety. Designated posts are recognized as a classic mechanism for perpetrating invidious discrimination, since they permit voters to cast only

analysis.”]; *Hull v. Cason* (1981) 114 Cal.App.3d 344, 372–374 [“[t]he equal protection standards of the Fourteenth Amendment, and of the state’s Constitution, are substantially the same”]; *Sanchez v. State* (2009) 179 Cal.App.4th 467, 487 [citing federal law for elements of Equal Protection claim]; *Kim v. Workers’ Comp. Appeals Bd.* (1999) 73 Cal.App.4th 1357, 1361 [same].)

1 one vote for a single position, effectively preventing minorities from concentrating their votes and
2 electing candidates of choice.

3 By 1945, Santa Monica's voters understood the limitations of a commission form of govern-
4 ment. As a result, they overwhelmingly approved the election of a Board of Freeholders—made up of
5 15 members of the community, tasked with proposing comprehensive reforms to Santa Monica's sys-
6 tem of government. There was no evidence that any of the Freeholders harbored any racial animus.
7 On the contrary, at least one Freeholder was a member of the NAACP and the local Interracial Progress
8 Committee.

9 The Freeholders diligently studied various forms of government. They ultimately proposed a
10 new City Charter that abandoned designated posts and included, among other things, a seven-member
11 City Council elected at large—essentially the same method of election in place today.

12 The new Charter would immediately and significantly increase minority voting strength by ex-
13 panding the number of seats from three to seven. Voters could also cast up to three or four votes in
14 each Council election—with no prohibition on “single-shot” or “bullet” voting, thus allowing minori-
15 ties to concentrate their votes on a single candidate (or multiple candidates of choice). The new Charter
16 also did not include a majority vote requirement, which would have impeded the election of a minority
17 candidate of choice through a splintering of votes for other candidates. Also included in the new Char-
18 ter was a prohibition against racial discrimination for City employees, punishable by fines and/or im-
19 prisonment. The pro-minority aspects of the new Charter were widely understood. The local newspa-
20 per even published an article titled, “New Charter Aids Racial Minorities,” which highlighted, among
21 other features, the provision that outlawed discrimination in public employment, and that “the oppor-
22 tunity for representation in the minority groups has been increased two and a half times over the present
23 charter by expansion of the City Council from three to seven members.” (Ex. 1816 at 477.)

24 Following the Freeholders' proposal of the new Charter, they conducted significant outreach in
25 the community, holding a series of meetings (including with members of the NAACP and the League
26 of Women Voters), and making copies of the proposed Charter available throughout the City so that
27 residents could review it.

1 There was considerable debate about the pros and cons of the new Charter. On one side, an
2 “Anti-Charter Committee” published a series of ads that advocated for maintaining the status quo—
3 that is, three commissioners elected at-large to designated posts—arguing that “[o]ur present govern-
4 ment can’t be too bad!” The Anti-Charter Committee remained mostly anonymous, referred to simply
5 as “business men” in the local press (none was a member of the NAACP or Interracial Progress Com-
6 mittee), although it was widely suspected that the opposition was being mounted by incumbent City
7 officials and “others riding on the local gravy train.” (Ex. 1816 at 499.) The anti-Charter ads included
8 anti-Communist rhetoric, concerns about the potential costs of a new government, and complaints
9 about the council-manager system, which the ads referred to as a “dictatorship.”

10 Significantly, none of the public arguments against the new Charter suggested that district-
11 based elections would have been preferable for minorities. And there is no dispute that a district system
12 would have been highly detrimental to minorities in 1946, which is why no minorities publicly advo-
13 cated for such a system in 1946.

14 On the other side of the debate, prominent minority leaders (among many others) urged citizens
15 to vote “yes” on the new Charter and the at-large elections of a seven-member council. Vocal support-
16 ers of the Charter included Reverend W.P. Carter—Santa Monica’s former head of the NAACP and a
17 member of the Interracial Progress Committee, who started the Calvary Baptist Church and was “prob-
18 ably the most influential [African American] in the city, maintaining strong leadership through the
19 1960s civil rights movement.” (Ex. 1816 at 498.) Other minorities advocating in favor of the new
20 Charter included Reverend Carter’s wife, Blanche Carter (who later became the first African-American
21 on the Santa Monica school board), Mrs. Marcus Tucker (whose son, Marcus Jr., would later become
22 Santa Monica’s first African-American City Attorney, and then a Superior Court Judge), Mrs. Marion
23 Barnes (whose husband, Frank, was a former NAACP leader), Ysidro Reyes, Reverend Alfonso
24 Sanchez, and Rabbi Maurice Kleinberg. There is no evidence that *any* racial or ethnic minorities op-
25 posed the new Charter.

1 In 1946, Santa Monica voted in favor of the Charter, and it held its first election under the new
2 system in 1947.⁶

3 In 1975, Santa Monica’s voters overwhelmingly rejected a ballot proposition that would have
4 resulted in a return to district-based elections and made a host of other changes. At the time, the City’s
5 two sitting African-American councilmembers urged a “no” vote on district elections, as did a Latino
6 candidate for the Council, Carmen Casillas (a member of LULAC), who explained that he believed “in
7 the right to vote for all seven council seats.” Plaintiffs do not argue that the rejection of districts in
8 1975 was racially discriminatory; in fact, it decidedly was not.

9 In 1984, the City began holding “on-cycle” elections at the same time as gubernatorial and
10 presidential elections. This helped minorities, since “off-cycle” elections in odd years depress turnout.

11 In 1988, Santa Monica voters overwhelmingly rejected a proposition that would have reintro-
12 duced designated posts, which are far less favorable to minorities than open seats.

13 Shortly before 1992, the City enacted measures that were beneficial to minorities, including
14 prohibiting discrimination in private clubs and requiring 30% of new construction to be set aside for
15 affordable housing. In 1990, voters elected Tony Vazquez to the City Council.

16 In 1992, the City Council formed a Charter Review Commission to evaluate the merits of adopt-
17 ing a new method of election—somewhat similar to what the Board of Freeholders were tasked with
18 doing in 1945. The Commission engaged experts, held public meetings, and delivered a report to the
19 City Council. Fourteen of the fifteen Commissioners favored switching to a new method of election,
20 but they could not agree on what that new method should be (eight favored a ranked-choice scheme,
21 and only five preferred reverting back to districts). The Commissioners noted that they had drafted
22 their report with limited information and time, and that further investigation was necessary before any
23 conclusions could be drawn about the probable success rates of minority candidates under any of the
24 competing systems.

25
26 _____
27 ⁶ Reverend Carter ran for City Council in 1947 and came in 9th of 49 candidates—demonstrating
28 that he received a significant amount of crossover support from whites, given the small population of
African Americans in Santa Monica at that time.

1 With respect to districts, the Commission observed in its report that “voting Latinos in [a] dis-
2 trict might be too few to prevail, and Latinos outside the district would have less influence on the
3 outcome than they do now,” minorities would lose influence over six of the seven councilmembers,
4 voters would vote every four years instead of every two, and councilmembers may tend to focus only
5 on their own districts rather than the good of the whole City. In addition, district boundaries would
6 require revision every ten years, and the reapportionment process generates friction and is subject to
7 abuse through gerrymandering.

8 The City Council held a lengthy public hearing on the Commission’s report, including a policy-
9 based discussion of the pros and cons of the various election systems identified in the report. The
10 Councilmembers consistently expressed a desire to expand minority representation in Santa Monica.
11 Ultimately, after the Council debated the relative merits of the various alternatives, they voted not to
12 put either ranked-choice voting or districts on the ballot, but resolved to collect further information on
13 alternative election systems. Contrary to plaintiffs’ claims, no Councilmember made any comments
14 that can reasonably be interpreted as indicating any discriminatory intent.

15 In any event, the topic of districted elections was again put to the voters ten years later. In 2002,
16 Santa Monica again rejected a ballot proposition that would have reverted back to districted elections.
17 Plaintiffs do not claim that this rejection was intentionally discriminatory; it was not.

18 Simply put, it would be reversible error for this Court to find an Equal Protection violation on
19 this record.

Objectionable portion of PSOD	Specific objections/responses
26:26–27:5	To prevail on their Equal Protection claim, plaintiffs must demonstrate that the City’s at-large electoral system has caused a disparate impact that was intended by the relevant decisionmakers. (<i>Rogers v. Lodge</i> (1982) 458 U.S. 613, 617; <i>Johnson v. DeSoto Cty. Bd. of Comm’rs</i> (11th Cir. 2000) 204 F.3d 1335, 1343–1346; <i>Cano</i> , 211 F.Supp.2d at 1245.) The evidence does not show that the City’s electoral system was ever—in 1946, 1992, or at any other time—adopted or maintained for the purpose of discriminating against minority voters. See also discussion under 25:6–15 above.
27:5–7	This is a misleading excerpt from the Charter Review Commission report. Although the Commissioners favored switching to a new method of election, they could not agree on a substitute system. (Ex. 127 at 23–24.) Eight Commissioners favored a ranked-choice-voting scheme; only five

1		preferred districts. (127 at 24; Tr. 1689:12-17, 1691:20-25, 3802:11-20.)
2		The Commissioners noted that they had drafted the report with limited
3		information and time, and that further investigation was necessary before
4		any conclusions could be drawn about the “probable success rates” of mi-
5		nority-preferred candidates under the competing systems. (Ex. 127 at 27–
6		28, 64.) After a public hearing, the Council voted not to put either ranked-
7		choice voting or districts on the ballot, but resolved to collect further in-
8		formation on alternative election schemes. (Tr. 3257:16-24.)
9		In any event, the quotation cannot, as a matter of law, support a finding
10		of purposeful discrimination. “‘Discriminatory purpose’ . . . implies more
11		than intent as volition or intent as awareness of consequences. It implies
12		that the decisionmaker . . . selected or reaffirmed a particular course of
13		action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse
14		effects upon an identifiable group.” (<i>Feeney</i> , 442 U.S. at 279.)
15	27:7-11	The problems with this argument are legion. Plaintiffs are referring to an
16		advertisement run by the Anti-Charter Committee, and are taking it out
17		of context in any event. As an initial matter, and as noted in response to
18		27:5-7, mere awareness of discriminatory consequences is never enough
19		to support a claim of intentional discrimination. Further, the City proved
20		at trial that this and other Anti-Charter Committee ads were nothing more
21		than a smokescreen intended to preserve the current at-large system, <i>not</i>
22		a call to switch to districted elections, as plaintiffs have suggested. The
23		ads make clear that Committee favored the status quo: a three-commis-
24		sioner, designated-post system, which was far less favorable to minorities
25		than the new system. (Ex. 1816 at 454 [“Our present government can’t
26		be too bad!”]; <i>id.</i> at 479 [arguing that “Santa Monica has one of the most
27		economical governments in the country. Why change to the unknown?”];
28		<i>id.</i> at 459 [likening Charter supporters to communists]; Tr. 3635:2-16
		[Anti-Charter Committee ad does not refer to or advocate for districts];
		Tr. 3643:16-26, 3647:27–3650:23 [had Anti-Charter Committee suc-
		ceeded, City would have maintained status quo, not switched to dis-
		tricts].) The Committee was not a group of progressives; for instance, it
		defended the commission form of government by lauding the example of
		Topeka, Kansas—whose Board of Education would, a few years later, be
		the defendant in <i>Brown v. Board</i> . (Ex. 1816 at 470; Tr. 3652:16–
		3653:23.) Although supporters of the Charter, many of them minorities,
		publicly declared their support, Anti-Charter Committee members mostly
		identified themselves only as “business men and other private citizens”;
		and the few who did reveal their names were not members of the Interrac-
		ial Progress Committee. (Tr. 1539:6-13 [Charter proponents affixed
		their names to ads]; Ex. 1816 at 454, 459, 479, 480, Tr. 3654:22–3655:22
		[Charter opponents did not affix their names to ads, and the few who iden-
		tified themselves otherwise were not members of the Interracial Progress
		Committee].) Plaintiffs did not identify even a single member of any mi-
		nority group who advocated for districts in 1946. (Tr. 3269:10-17,
		3276:26-28.)

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	27:14-17	<p>As noted immediately above, in response to 27:7-11, it is not only legally irrelevant but also false that “proponents and opponents of the at-large system . . . recognized that the at-large system would impair minority representation.” Any such finding would be legally irrelevant because mere awareness of the possibility of a disparate impact cannot support a finding of intentional discrimination. It would also be false. The only document in evidence identified by plaintiffs as supporting that assertion is the Anti-Charter Committee advertisement discussed above, which should be disregarded as misleading—its authors wanted to maintain the electoral scheme that had been adopted in 1914; they did <i>not</i> favor districted elections. Nor, for that matter, is there any record evidence showing that <i>any</i> members of <i>any</i> minority group advocated for districts or opposed the charter. (Tr. 3269:10-17, 3276:26-28, 3362:7-24.) The absence of such evidence is unsurprising because the minority population in 1946 was too small for districts to have given any minority group the ability to elect candidates of its choice. (Tr. 3269:18–3276:28.) In fact, notable minority leaders in Santa Monica openly endorsed the Charter, including the City’s most prominent African-American leader (Reverend W.P. Carter) and other members of Santa Monica’s Interracial Progress Committee. (Ex. 1816 at 499, 524 [pro-Charter ads supported by, among others, Rev. Welford Carter, Mrs. Welford Carter, Rev. Alfonso Sanchez, Sr., Mrs. Marcus Tucker, Rabbi Maurice Kleinberg, Ysidro Reyes, Martin Barnes, and Vivian Wilken]; Ex. 1206 at 193 [listing members of Interracial Progress Committee who lent their names to pro-Charter ad]; Ex. 1206 at 193, 259 [Rev. Welford Carter, pastor of Calvary Baptist Church, member of the Committee for Interracial Progress, and the most influential African-American leader in the City through the Civil Rights movement]; Ex. 1816 at 498, Tr. 3365:18-25 [Mrs. Carter was “an activist in Santa Monica in her own right,” and “in 1971 she became the first African-American to serve on the School Board in Santa Monica”]; Ex. 1206 at 195, 242 [Vivian L. Wilken, founding member of the Santa Monica branch of the County Supervisors Interracial Progress Committee, and a member of the NAACP]; Ex. 1816 at 513 [Frank Barnes was “a fearless civil rights advocate for over 60 years, serving as President of the Southern Area Conference of the NAACP for 10 years” and “co-founded the Fair Housing Council of California”]) Ex. 1206 at 241, Tr. 1443:18–1445:6, 1445:14-18 [Martin Goodfriend, founder and president of the Jewish Community Center, President and founder of the Jewish Community Council, and President of the B’Nai B’rith Lodge]; Ex. 1816 at 15, Tr. 1447:12-26 [Leo B. Marx, former President and board member of Beth Shalom Temple and President of the Jewish Family Service]; Ex. 1817 at 1867, 2085 [Marcus Tucker was first African-American physician to live and work in Santa Monica, and Marcus Tucker, Jr., became a Los Angeles Superior Court judge]; Ex. 1817 at 2087 [citing Ysidro Reyes’s many “civic, professional, fraternal, religious, and political memberships”]; Ex. 1206 at 193 [listing members of Interracial Progress Committee]; Tr. 3372:25–3373:19 [“It is inconceivable these members of the Interracial Progress Committee, including the preeminent African-American civil rights leader, including a number of other African Americans and Latinos, would put their name on an ad supporting a charter that allegedly had the effect and intent of discriminating against minorities.”]; Tr. 3373:20–3374:2 [no evidence Committee members were hostile to the Charter].)</p>
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	<p>The notion that the Charter was known to be a threat to minority representation is also demonstrably false because the changes it effected could only have had a positive impact on minorities. Three commissioners became seven councilmembers, making it easier for a cohesive minority group to elect candidates of its choice. (Tr. 3260:4–3265:2.) Voters who previously had at most two votes to cast (in separate races) could now cast three or four votes for candidates in the same election. (Tr. 3253:20–23, 3260:4–3265:2, 3266:6–25.) Designated posts, recognized as a classic mechanism for perpetrating invidious discrimination, were abandoned. (Tr. 3261:9–3262:27, 3012:20–28.) The new system did not impose a majority-vote requirement or prohibit bullet voting, allowing minorities to maximize their voting strength. (Tr. 3333:14–3334:4, 3015:1–3017:11.) And any districted system “would have been highly detrimental to minorities,” as it would have packed some of them into a district where they would not have the ability to elect candidates of their choice and submerged the rest in overwhelmingly white districts. (Tr. 3276:6–28.) Also, the 1946 Charter prohibited discrimination against City employees on the basis of race, punishing violations with a fine and/or imprisonment. (Ex. 1512 at 15 [§ 1101], 25 [§ 1701]; Tr. 3322:16–3330:8; see also Tr. 3330:9–3331:17 [collective-bargaining provision in Charter also favorable to minorities].)</p> <p>Proponents of the Charter specifically noted that it would benefit minority voters. (Ex. 1816 at 443–444, 477; Ex. 1323 [“Barnard told the voters that every authority on City government consulted by the Freeholders had urged the Charter framers not to handicap the council manager form of government by giving Santa Monica seven little ward mayors, each competing against the other.”]; see also Tr. 3342:2–4 [Cornett later “denounced the move to districts and said it is a move to disenfranchise the elector by limiting his vote to one council member”].)</p>
27, fn. 15	<p>The reference to the School Board here is irrelevant. Plaintiffs have raised neither a CVRA nor Equal Protection challenge to the at-large method of elections as it applies to the school board.</p>
27:17–21	<p>Dr. Kousser’s sole source on interpreting propositions, Prof. HoSang’s book, notes that Prop. 11 was not, as Dr. Kousser contended and plaintiffs somehow still insist, a “pure measure of attitude on racial discrimination,” because <i>both sides</i> appealed to racial tolerance and charged the other with racial intolerance. (Ex. 1781 at 61 [“few Californians seemed willing to openly reject the principles of nondiscrimination, equal opportunity, and tolerance. . . . The campaign against Proposition 11 was not premised on a rejection of tolerance per se but on a proposition about what types of authority within a society that had committed itself to tolerance.”]; Tr. 3294:27–3297:8 [“both sides had used language and appeal and persuasiveness of racial tolerance and racial progress, and each charged the other with racial intolerance”].) Prop. 11 was also associated with communism. (Ex. 1781 at 61; Tr. 3297:9–28.)</p> <p>And Prof. HoSang explains that it is unreasonable to conclude that opposition to Prop. 11 was racially driven because many people who voted against Prop. 11 also voted against a straightforwardly racist measure, Prop. 15, which would have barred aliens from holding land. (Ex. 1781 at 59 [“the outcome of another proposition on the same ballot demon-</p>

1		strates the challenge of making clear pronouncements about the electorate's judgments about race and racism based on Proposition 11 alone"]; <i>id.</i> at 61 ["Many factors shaped this particular historical outcome: the exigencies of war and peace, the rising tide of anti-Communism and Cold War politics, the decline of left-oriented unionism, and the actions of a diverse set of political forces"].) Tellingly, Dr. Kousser omitted Prop. 15 from his declaration, even though he had remarked on it in his notes. (Tr. 3298:16–3299:14; Ex. 1300 [Prop. 15 does not appear in Dr. Kousser's declaration].) This is one of many instances of inconsistency and bias in Dr. Kousser's testimony that demonstrates its lack of credibility and reliability.
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7		Also omitted from Dr. Kousser's declaration, though again present in his personal notes, is the fact that the 1946 Charter included a Fair Employment Clause. (See Tr. 3322:16-3324:5.) The clause explicitly bars discrimination "because of race, religion, color, national origin, or ancestry" in employment for both applicants and people already holding jobs. (Tr. 3322:24-3323:17.) Including this ordinance in the charter not only reinforced constitutional guarantees, but also made discrimination in employment <i>a crime subject to imprisonment</i> in the City of Santa Monica, an unprecedented action for cities at the time. (See Tr. 3327:19-3329:27.)
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12		Proposition 11 was also controversial insofar as it would also have created a Fair Employment Practices Commission to police unlawful practices. (See Tr. 1406:15-22.)
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14	27:22-23	Every <i>Arlington Heights</i> factor weighs <i>against</i> a finding of discriminatory intent in this case for the reasons outlined in the following objections.
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16	28:1-6	There is no record evidence concerning elections held in the 1940s, 1950s, or 1960s, nor any record evidence concerning the race or ethnicity of the candidates running in those elections, or the preferences of minority voters in those elections.
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18		Further, un rebutted record evidence shows that minority population in 1946 was too small for districts to have given any minority group the ability to elect candidates of its choice. (Tr. 3269:18–3276:28.) So whether minorities did or did not vote cohesively in these decades—and there is no evidence either way in the record—they could not have elected candidates of their choice under <i>any</i> electoral system, including a districted one.
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22	28:6-9	The purported "impact on the minority-concentrated Pico Neighborhood" was addressed at length above in response to 20:17–21:6. That series of objections, incorporated by reference here, also explains why it is unreasonable to conclude that the City has "ignore[d] [minority] interests"; to the contrary, the City has invested a great deal of money and effort into the Pico Neighborhood and established a wide array of programs that directly benefit minority residents.
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26		Further, candidates in Santa Monica cannot afford to ignore the Latino vote. The electorate is often considerably fragmented, and Latino votes may account for the difference between winning and losing. Indeed, Latino-preferred candidates are elected more often than not, even according
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	to plaintiffs' own election analyses. (See Cl. Br. at 6–9; Exs. 272, 275, 278, 281, 284, 287, 290 [Council elections]; Ex. 1652 at 72, Tr. 2315:3–2316:28 [exogenous local elections, ER]; Ex. 1652A at 2, Tr. 2320:7–2321:10 [exogenous local elections, EI].)
28:10-11	The historical background of the adoption of the Charter in 1946 does not support a finding of discriminatory intent, for the reasons outlined below.
28:11-12	<p>As was addressed at length above in response to 27:5-7, 27:7-11, and 27:14-17—which objections are here incorporated by reference—it is not true that at-large elections were “well understood” in 1946 to disadvantage minorities. It is also legally irrelevant, because mere awareness of a potential disparate impact cannot support a finding of intentional discrimination.</p> <p>Additionally, at-large elections are not per se disadvantageous to minority voters. They can be imposed or applied in such a way that they are disadvantageous, but the very purpose of the CVRA is to distinguish problematic at-large systems from unproblematic ones. If at-large systems were per se disadvantageous to minority voters, the statute would presumably be written as a simple prohibition of at-large voting schemes rather than a multi-part and complex statute expressed in over 1,000 words.</p>
28:12-14	<p>This statement misrepresents the record in two respects. First, the evidence to which plaintiffs refer, Exhibit 1816, shows that the non-white population was not growing a great deal. It grew substantially only in percentage, not absolute, terms; the City's population remained overwhelmingly white. (Ex. 1300 at 59 [Dr. Kousser's presentation of population trends]; Ex. 1816 at 460; Ex. 1801, Ex. 1802, Tr. 3284:16–3289:21 [non-white share of population increased 1.1 percentage points, from 3.4% to 4.5%, from 1940 to 1946].)</p> <p>Second, the article in question does not sound a note of “alarm.” To the contrary, it is a short, neutrally worded piece concerning Census data, and plaintiffs' contrary interpretation is unreasonable and tendentious. In full, the article reads:</p> <p style="text-align: center;"><i>White Population Total Here 64,415 Government Releases Census Breakdown</i></p> <p>The white population of Santa Monica increased 24.6 percent between April 1, 1940 and July 1, 1946, and the nonwhite population increased 59 percent, the United States Bureau of Census reported today.</p> <p>A breakdown of figures compiled in the special census of last July showed a total population in Santa Monica of 67,743, an increase of 26.1 percent over the 53,500 reported in 1940. In 1946 there are 64,415 white residents, and 3058 comprising the total of other races.</p> <p>The number of occupied dwelling units in Santa Monica was 18,025 on April 1, 1940, and on July 1 of this year census tabulators reported the figure had increased to 22,740 occupied units. This is an increase of 26 percent. The population per dwelling unit remained the same at an average of 3.97</p>

	The figures were released by J.C. Capt, director of the Census Bureau, Washington, D.C.
28:14-16	The fact that someone was white, wealthy, or lived in a certain place does not mean that that person was racist and intended to discriminate against minority voters. Tellingly, plaintiffs' expert, Dr. Kousser, identified not a scrap of evidence that any Freeholders harbored any racial animus. (Tr. 3284:6-14.)
28:16-18	<p>Plaintiffs assert, without explanation, that at-large elections were in the "self-interest" of the Freeholders. It is far from clear, as a logical or historical matter, why each of the 15 Freeholders would have favored at-large elections, or how at-large elections would have helped them. To the extent that plaintiffs' argument depends on race or ethnicity, it is illogical. As shown by the newspaper article to which plaintiffs refer earlier in the same paragraph, the City remained over 95 percent white in 1946. <i>No</i> electoral system, districted or otherwise, would have given any cohesive minority group the ability to elect candidates of its choice.</p> <p>Also, there is no record evidence showing that at least three Freeholders ran for Council seats, nor would such evidence prove anything in any event. Perhaps those same candidates would also have won election under a districted system.</p>
28:18-21	<p>Plaintiffs' facts are either false or do not support their theory.</p> <p>Plaintiffs' only evidence concerning the Zoot Suit Riots specifically <i>exonerates</i> Santa Monica. (Tr. 3281:11–3283:6.)</p> <p>There is no record evidence supporting plaintiffs' view that the Committee on Interracial Progress was an outgrowth of unusual racial strife in Santa Monica. The Court should draw the opposite conclusion—that Santa Monica was unusually progressive with respect to race relations. Further, it is notable that members of the Interracial Progress Committee <i>supported the Charter</i>. (E.g., Ex. 1206 at 193, 259; Tr. 3372:25–3374:2.) No members of the Committee, by contrast, signed on to the Anti-Charter Committee advertisements that plaintiffs misread as support for districts. (Ex. 1816 at 454, 459, 479, 480, Tr. 3654:22–3655:22.)</p> <p>And anti-Japanese sentiments were the isolated and temporary product of wartime fervor, and they had nothing to do with elections. (Tr. 3279:16–3280:14.)</p>
28:21-25	Objections to this line of argument were registered above in response to 27:17-21. Those objections are incorporated by reference here. In addition, Dr. Kousser's EI analysis purporting to show a strong correlation is flawed for several reasons.
28:26–29:2	This supposed "waffl[ing]" is not evidence that the Freeholders were aware that districted elections would be better for minority residents or that they wished to discriminate against those residents.

	<p>To the contrary, there were sound, non-discriminatory reasons not to put the voters to a choice between competing electoral systems. No one, particularly minorities or those opposed to the Charter, was clamoring for districts; the ballot was already long and complicated, so there was real risk of confusion if voters had to choose among competing systems; and a hybrid system would have been “the worst of all worlds for minorities,” who were too few in number to control a district and who would have been able to vote for only four councilmembers (three at-large and one in a district) instead of seven. (Tr. 3319:7–3320:6.) The high degree of transparency was also inconsistent with an intent to conceal racial discrimination. (Tr. 3312:19–3316:25.) The Freeholders and local civic organizations organized meetings to discuss the Charter, including with members of the NAACP. (E.g., Ex. 1816 at 442, 447, 477; Tr. 3316:27–3318:17.) In sum, it is illogical and counterfactual to conclude that the decision to present a new at-large system, which eliminated the arguably discriminatory features of the old electoral system, was motivated by discrimination.</p>
29:3-7	<p>Plaintiffs have so little to say to support their unfounded claim of discriminatory purpose that they resort to recycling allegations to fit more than one <i>Arlington Heights</i> factor. For the reasons explained immediately above, in response to 28:26–29:2, and incorporated by reference here, there was nothing suspicious about the Freeholders’ decision to place only what would become the 1946 Charter on the ballot. Further, there is no record evidence that they did so “in the wake of discussion of minority representation.” It is unclear what plaintiffs mean by such “discussion.” If they mean the advertisement of the Anti-Charter Committee addressed above, in response to 27:7-11 and 27:14-17—which objections are incorporated by referenced here—then that was no “discussion” at all. It was a ploy, an exercise in misdirection by a small group of people who were not intent on districts or a different at-large system and wished to preserve the status quo. In fact, as noted above, in response to 27:14-17—and which objections are incorporated here by reference—the relevant “discussion” about the effect of the Charter on minority voting strength was uniformly positive, with prominent persons of color backing the Charter and Freeholders publicly touting the greater representation it would bring minority voters.</p> <p>As for the article noting that the Freeholders’ course of action was “unexpected,” it was never admitted into evidence and should not be cited in the Court’s Statement of Decision. Even if it were, the article itself explains the non-discriminatory reasons why the Board acted as it did: (1) “it would not be desirable to confuse the issues by placing both [options] on the ballot”; (2) “election at large is the best method”; (3) at-large elections were “calculated to eliminate ‘log rolling’ tactics.” (Ex. 24 [not admitted].)</p>
29:8-11	<p>Plaintiffs cite no legislative or administrative history. They still insist, without evidence, that “proponents and opponents” of the Charter alike “understood that at-large elections would diminish minorities’ influence on elections.” As noted several times above, including in response to 27:7-11 and 27:14-17—and which objections are incorporated by reference here—it was <i>not</i> widely understood that the City’s current at-large</p>

1		system would diminish minority voting strength. To the contrary, contemporaneous statements demonstrate that Freeholders and minorities alike knew that the Charter would <i>enhance</i> minority voting power, and that they did not favor districts as an alternative.
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4		There is no evidence that <i>any</i> racial or ethnic minorities opposed the Charter. To the contrary, notable minority leaders in Santa Monica openly <i>endorsed</i> the Charter, including the City's most prominent African-American leader (Reverend W.P. Carter) and other members of Santa Monica's Interracial Progress Committee. As for districts, by contrast, little of the substantial public debate over the Charter concerned districts. (E.g., Ex. 1816 at 492 [City worker protections]; Ex. 1816 at 486 [tax rate under council-manager form of government lower]; Tr. 1528:14-18 [Kousser admitting that a "reduction in taxes can be a significant motivation" in voting decisions]; Ex. 1816 at 456 [City Attorney]; Ex. 1816 at 491 [City Manager]; see also Tr. 1557:27-28 [plaintiffs' counsel arguing that the Charter was "multiple, multiple pages of many things. It is not just at-large versus district voting"].) Further, there is <i>no</i> record evidence showing that <i>any</i> members of <i>any</i> minority group advocated for districts (Tr. 3269:10-17, 3276:26-28), which is unsurprising because the minority population in 1946 was too small for districts to have given any minority group the ability to elect candidates of its choice. (Tr. 3269:18-3276:28.)
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13	29:16-18	Santa Monica voters have twice considered the question whether they would prefer districted elections over the current at-large system. They overwhelmingly rejected the idea both times. (Ex. 1653A at 26, Tr. 2304:23-2306:17 [ER estimates of Measure HH in 2002]; see also Ex. 1652A at 2, Tr. 2321:1-10 [EI estimates of Measure HH in 2002]; Ex. 1368 at 9 [election results on Prop. 3 in 1975].) In 2002, opposition to Measure HH was overwhelming among both Latino and white voters. (Tr. 2303:21-2307:12; Ex. 1653A at 43.)
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17	29:18-21	This is not an accurate characterization of why the Commission was appointed. The Charter Review Commission's report states simply that the Commission "was appointed by the City Council to review several specific issues relating to the City Charter." (Ex. 127-1) The majority of these issues did not relate to the method of selection of the City Council. (Ex. 127-15 to -19). The Commission's report also reveals that it had a large number of objectives, only one of which was "to ensure that governing bodies reflect the ethnic diversity of Santa Monica." (Ex. 127 at 29.) Other objectives included: "to guarantee accountability, so that over the long term Council members faithfully reflect popular preferences in their policy-making"; "to preserve accessibility, so that over the short run Council members are responsive to day-to-day needs of their constituents"; "to facilitate the representation of the diverse currents of opinion in Santa Monica, and assure a place on the public agenda for the varied priorities of many organizations and all neighborhoods"; and "to maintain, while broadening the issue agenda to an array of individual and group concerns, the centrality of common concerns, and assure that Council members approach problems with the interest of the whole City foremost in their minds." (<i>Id.</i> at 9-10.)
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27	29:23-25	Dr. Kousser concluded in his 1992 report only that "if someone brought a case, the city would have to defend itself." (Ex. 1315 at 1.) Dr. Kousser
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	<p>also emphasized that “the time for my investigation was very short, my research has not been exhaustive by any means, and my conclusions should be regarded as quite tentative.” (<i>Id.</i> at 2.)</p> <p>His reasons for his tentative conclusion were not identical to those supplied by plaintiffs in the PSOD. (See Ex. 1315.)</p>
29:26-27	<p>The “study and investigations” of the Commission not completed. The Commissioners themselves noted that they had drafted the report with limited information and time, and that further investigation was necessary before any conclusions could be drawn about the “probable success rates” of minority-preferred candidates under the competing systems. (Ex. 127 at 27–28, 64.)</p> <p>Although 14 of the 15 Commissioners favored switching to a new method of election, they could not agree on a substitute system. (Ex. 127 at 23–24.) Eight Commissioners favored a ranked-choice-voting scheme; only five preferred districts. (Ex. 127 at 24; Tr. 1689:12-17, 1691:20-25, 3802:11-20.)</p>
29:27–30:2	<p>The Commissioners focused not exclusively on racial and ethnic minorities, but also on “neighborhoods and issue groups.” (Ex. 127 at 24.) Their report scarcely mentions the Pico Neighborhood. And although the Commissioners generally agreed that the City should adopt a new electoral system, they could not agree on the best alternative, in large part because each of them, including districts, had major drawbacks (e.g., districting would have a “disempowering” effect, because “every voter would lose much influence over six of seven council members,” which the “majority of the Commission believed . . . was an unacceptable tradeoff.” (<i>Id.</i> at 5.)</p>
30:4-5	<p>Nothing in the video even remotely demonstrates that any councilmember chose not to put districts to a vote of the electorate for a racially discriminatory reason, as plaintiffs were obligated to prove. To the contrary, plaintiffs have admitted that there is no evidence of racial animus on the part of the Council in 1992; in fact, the councilmembers consistently expressed a desire to <i>expand</i> minority representation. (Tr. 968:2-4 [Councilmember Abdo: “I am a strong proponent for finding ways to increase minority representation on the council”]; Tr. 986:2-12 [Dr. Kousser noting that councilmembers stated that “they wanted more minorities on the council”]; Tr. 1623:5–1625:18 [Dr. Kousser agreeing that councilmembers did not make any explicitly discriminatory statements]; see also Tr. 3394:21-25 [plaintiffs’ counsel arguing that “We have never said that this is anything about racism. We’re talking – in fact, we’ve said the opposite, with the analogy to the Edelman situation in Gloria Molina. We’ve said the opposite.”].)</p>
30:5-13	<p>Irrelevant. Mere awareness of the possible disparate impact of a challenged enactment cannot support a finding that the enactment was motivated by a discriminatory purpose. (See, e.g., responses to 27:5-7 and 27:7-11, which are incorporated by reference in relevant part here.)</p> <p>The statements made during the Council meeting (a video recording of which, in its totality, is in evidence as Ex. 267) demonstrate that the intent</p>

1		of the Councilmembers was benign, not discriminatory. In fact, the councilmembers consistently expressed a desire to expand minority representation. (Tr. 968:2-4 [Councilmember Abdo: “I am a strong proponent for finding ways to increase minority representation on the council”]; Tr. 986:2-12 [Dr. Kousser noting that councilmembers stated that “they wanted more minorities on the council”]; Tr. 1623:5–1625:18 [Dr. Kousser agreeing that councilmembers did not make any explicitly discriminatory statements]; see also Tr. 3394:21-25[(plaintiffs’ counsel arguing that “We have never said that this is anything about racism. We’re talking – in fact, we’ve said the opposite, with the analogy to the Edelman situation in Gloria Molina. We’ve said the opposite.”].)
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7		No speaker had any evidence that the City’s electoral system discriminated against Latino voters. At least one pointed to Dr. Kousser’s 1992 report, but not only was that report riddled with inconsistencies and errors, but Dr. Kousser did not conclude that the City had discriminated against minorities in adopting its current electoral system. He concluded only that the City would need to defend itself against a claim to that effect. (Ex. 1315 at 1.) And some speakers expressly disavowed the idea that the City’s electoral system was the product of intentional discrimination. (See, e.g., Tr. 1127:28–1128:12 [De Santis stating, “I don’t think that any of the members of this council have discriminatory intent!”]; Tr. 1627:22–1628:19 [Fajardo noting he had no opinion on whether the electoral system was the product of discriminatory intent].)
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14		The Council could not have “understood well that the at-large system prevented racial minorities from achieving representation,” because no record evidence shows that districted elections would have allowed Latinos to elect candidates of their choice in 1992; in fact, the only record evidence is to the contrary. (Tr. 1681:12-20 [Dr. Kousser did no analysis to show that districts would have increased Latino voting strength in 1992]; Tr. 3752:4-11 [Dr. Lichtman stating that no district could have done so].)
15		In fact, any districted system would have had an adverse effect on minority groups, which would have been too small to elect candidates of choice in any district but whose influence would have been diluted across seven districts. (Tr. 3752:12-19, 3794:23–3795:8, 3796:20–3797:15, 3801:2-25 [districts would have had adverse effect on African-Americans and Asians]; Tr. 3800:17-23 [Dr. Kousser did not analyze the impact of districts on African-Americans or Asians in Santa Monica]; Tr. 3752:20-26 [Vazquez, a Latino, was already sitting on the City Council in 1992]; Tr. 3752:27-3753:4 [Asha Greenberg, an Asian-American, was also elected to the City Council in 1992]; Tr. 3783:6-18, 3803:16–3804:12 [Latino registered-voter population was too small for a district or alternative at-large system to have been effective]; Tr. 3790:17–3794:8 [Latinos would not have been able to win in any district, and Latinos outside the district would have been submerged in overwhelmingly non-Latino districts].)
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25	30:13-20 & fn. 16	This is a gross misreading of Zane’s public comments at the Council meeting. Zane stated that districts might render each councilmember a parochial “case manager . . . rather than [a] policy maker,” “afraid” to pass affordable housing projects in the face of “neighborhood protests.” (Tr. 953:22–958:21.) He stated that he was “sympathetic with some of the views of the district elections idea” but that he wanted a system that both solved “representational issues” and addressed “the needs of the
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1 poor with things like affordable housing.” (*Ibid.*) He therefore proposed
2 a “hybrid” system that would, in his view, enhance minority representa-
3 tion *and* allow the Council to provide affordable housing for the poor.
4 (*Ibid.*) Zane *never* expressed a desire to “continue to dump” affordable
5 housing in Pico, nor did he ever express a desire to retain an at-large sys-
6 tem, or move to a hybrid system rather than districts, as a means of limit-
7 ing either minority or Pico Neighborhood representation. (*Ibid.*) To the
8 contrary, in discussing his proposal for a hybrid system, Zane made clear
9 that he thought it would both provide for a “strong Pico Neighborhood
10 district” and that this district could be constructed to “retain, perhaps even
11 increase, the proportion of minorities” within it as a means of avoiding
12 any “dilution” of the “minority community there.” (*Ibid.*) These state-
13 ments demonstrate that Zane had *no* discriminatory intent.

14 This is consistent with the entire discussion at the Council meeting (which
15 was video-recorded and is in evidence as Ex. 267), as well as the context
16 in which that discussion occurred, all of which reveal a Council, including
17 Zane, intent on conducting a policy-based discussion of the pros and cons
18 of various elections systems, not a Council acting with any intent to sup-
19 press minority votes. The Council, after all, had established the Charter
20 Commission, tasked it with studying possible election changes, and
21 scheduled a public hearing on its report recommending a change, hardly
22 the action of a group intent on avoiding change as a means of suppressing
23 minority votes. Like Zane, Councilwoman Judy Abdo (who also voted
24 against districts) voiced support for increasing representation by minori-
25 ties: “I am a strong proponent for finding ways to increase the minority
26 representation on the Council, all elected bodies, and all Commissions,
27 and have worked hard to try and do that as a Councilmember myself.”
28 (Ex. 267.) She followed, however, by explaining why policy considera-
tions led her to believe why the City should not change to district-based
elections: “I think that the downsides of the straight district system out-
weigh the possible advantages, the main one being that each person has
only one vote once every four years and the accountability of that one
person is the only link that the voter has with their elected official. As it
is now, we each have the accountability as voters with seven people, three
every, one two-year cycle and four the other, and I think that’s an im-
portant concept.” (Ex. 267.) These policy considerations were discussed
in the Charter Commission’s own report, which recognized them as valid
concerns, not a pretext for discrimination. (Ex. 127.)

Plaintiffs’ contentions to the contrary rest not on what Zane actually said,
but on an interpretation of his statements by Dr. Kousser that has no basis
in the actual facts. Dr. Kousser’s efforts to twist Zane’s actual words into
evidence of discriminatory intent are indicative of the bias and lack of
connection to actual facts that permeated his testimony. The Court should
reject Dr. Kousser’s effort to ascribe discriminatory intent where there is
none for the same reasons a three-judge panel consisting of Ninth Circuit
Judge Stephen Reinhardt and District Judges Christine Snyder and Mar-
garet Morrow rejected it in *Cano v. Davis*: his “statement of the conclu-
sion is no stronger than the evidence that underlies it,” and because that
evidence fails to demonstrate discriminatory intent, “Dr. Kousser’s state-
ment to the contrary likewise cannot suffice.” 211 F. Supp. 2d 1208,
1225 (C.D. Cal. 2002).

The record also does not reflect that “the majority of the city’s affordable housing” was located in the Pico Neighborhood. That certainly was not the case at the time of the trial. (See Ex. 1922, Tr. 4220:21–4221:16, 4249:13-17, 4250:19-28 [publicly assisted housing projects scattered throughout City, not just in Pico Neighborhood]; Tr. 1067:5-16 [Duron, a sitting member of the Rent Control Board, disagreeing with notion that most affordable housing is in in the Pico Neighborhood]; Tr. 3434:22-27, 4220:21–4221:16, 4246:20–4247:4 [O’Day and Davis, sitting councilmembers, making same point]; Tr. 4064:20-24 [“Community Corporation has established different housing units all around the City of Santa Monica”]; 4245:14–4246:3 [under the City’s inclusionary housing rule, a portion of all newly developed housing must be set aside for deed-restricted affordable housing]; Tr. 4246:14-19 [rent-controlled units scattered throughout the City, not just in Pico Neighborhood].)

There is no record evidence that the *Outlook* was the “chief sponsor and spokesman for the charter change” in 1946, or even that any decisionmakers (that is, the Freeholders, to whom plaintiffs assign malign intent without any evidence) *read* that newspaper, much less shared its views. The editorial from which plaintiffs quote was unsigned and in no way traceable to the Freeholders. Even if it were, it is more reasonable to read the editorial, in its entirety, as a call for civic unity rather than as some racist screed. Indeed, even the quoted portion supplied by plaintiffs does not suggest that the only “liberal-minded” people who could run for and win office under an at-large system would necessarily be white. Furthermore, the fact that the editorial addresses both labor groups and racial minorities suggests that it was addressing interest groups of all kinds, not simply racial or ethnic groups.

30:20–31:6

Councilmember Zane’s statements in no way reflect racial animus.

Plaintiffs’ theory is ambiguous. In their closing brief, they took the position that Zane voted the way he did in order to preserve the power of Santa Monicans for Renters’ Rights. The City gave several reasons in its own closing brief why that theory made no sense, including that there was no reason to believe that SMRR could not adapt to districts and that SMRR had supported both minority candidates and candidates who had backed a switch to districts. Plaintiffs now say that Zane acted “to maintain the power of his political group,” but they fail to identify any political group different from SMRR. There is no “political group” to which they could be referring other than SMRR, and all the reasons cited by the City in its closing brief demonstrate that plaintiffs’ theory relating to SMRR makes no sense. In particular, there are at least three reasons to doubt the theory that SMRR and districts—or SMRR and minority interests—were somehow incompatible:

First, districts would not have eroded SMRR’s influence; the Charter Review Commission stated that it had “no reason to believe that slate politics could not comfortably adapt to the district format.” (Ex. 127 at 48; Tr. 3846:1–3847:8.)

Second, after 1992, Latino voters did not perceive that their interests were being represented by the councilmembers who had backed a switch to

districts. Holbrook favored districts (and explained at the Council hearing that he expected to win if districts were adopted, as no other incumbent lived in his district), but won roughly *zero* Latino votes in 1994; Olsen publicly opposed districts, but won roughly *all* Latino votes in 1996. (Tr. 939:14-26 [Holbrook favored districts]; Tr. 1678:16-1679:24 [Holbrook claimed he would win under a districted system, too]; Ex. 272, Tr. 3849:13-3850:19 [point estimate of Latino support for district advocate Holbrook in 1994: -108.9%]; Ex. 275, Tr. 3851:28-3852:2 [point estimate of Latino support for district opponent Olsen in 1996: 106.4%].)

Third, SMRR has never been even remotely hostile to minority candidates and voters. SMRR has consistently endorsed minority candidates, including Loya and de la Torre. (E.g., Tr. 187:21-25, 1667:9-13 [Maria Loya]; Ex. 1694, Tr. 191:8-28, 1667:14-28 [Jose Escarce, Maria Leon-Vazquez, Ana Jara, and Douglas Willis]; Ex. 1697 at 4, Tr. 1659:18-1660:4 [Tony Vazquez]; Ex. 1679 at 6, Tr. 1661:16-19 [Margaret Quinones-Perez]; Ex. 1682, Ex. 1711, Tr. 2495:23-28 [Barry Snell, Oscar de la Torre]; Tr. 1048:15-18 [Duron]; see also Tr. 4039:14-26 [Jara encouraged to run for School Board by Patricia Hoffman, co-chair of SMRR].) Minorities, including Loya, have also served on SMRR's steering committee. (E.g., Tr. 189:8-15 [Loya]; Ex. 1817 at 1588, Tr. 1685:11-15 [Willis].) Nor is there any evidence of SMRR resisting districts. SMRR has endorsed many candidates who publicly favored districts, including Loya and de la Torre, and repudiated candidates who opposed districts. (Tr. 1660:3-9 [Vazquez]; Ex. 1678, Ex. 1679 at 2, Ex. 1686 at 1, Tr. 1661:7-14, 1665:9-13, 1665:27-1667:8 [Ken Genser]; 1661:26-1662:7 [Willis]; Ex. 1682 at 2, 1670:11-20 [de la Torre]; Ex. 1679 at 3, 1662:8-26 [repudiating Herb Katz, who opposed districts].) And the chair of the Charter Review Commission, which recommended the abandonment of the at-large system, was also then serving as the *co-chair* of SMRR. (Ex. 1686 at 2 [Greenstein co-chair of SMRR]; Tr. 1665:21-1666:10 [Greenstein also chair of Charter Review Commission, which recommended moving away from at-large system].)

Plaintiffs cite *Garza*, where the court found intentional discrimination notwithstanding a lack of racial animus because councilmembers deliberately drew lines to minimize Latino voting influence and thereby preserve their own seats, but this case is nothing like *Garza*. Three of the four councilmembers who voted against a switch to districts, including Zane himself, did not seek reelection when their terms expired. (See Tr. 1630:10-18 [Dr. Kousser agreeing that "Mr. Zane had a discriminatory motive based on his desire to protect his city council seat"]; Tr. 1630:27-1631:25 [Zane stating at Council hearing that he was not running for reelection; Katz and Olsen likewise did not run for reelection]; Tr. 3842:7-3843:4 [explaining implied comparison between Edelman in *Garza* and Zane in this case is inapt because Zane never ran for reelection].)

31:7	Mr. Zane's statements were not a "smoking gun." They do not even remotely reveal discriminatory intent.
31:8-10	None of the <i>Arlington Heights</i> factors militates in favor of a finding of discriminatory intent in 1992, as the objections that follow make plain.

1	31:11-12	This is nonsensical. Councilmember Vazquez won under the very same system in 1990, and would win again in 2012 and in 2016. His loss was not caused by the “maintenance” of the system.
2		
3	31:12-17	As noted above in response to, among other things, 17:4-21, which objections are incorporated by reference here, Vazquez lost not because of white bloc voting, but because of a lack of support from African-American and Asian voters. His defeat is therefore not of legal significance under the third <i>Gingles</i> precondition.
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6	31:17-21	The City here incorporates by reference its objections to 28:6-9, which address plaintiffs’ incorrect assertions that the City’s electoral system has had a disparate impact on the Pico Neighborhood and that candidates can afford to ignore minority votes in Santa Monica. Also, the Pico Neighborhood was long majority-white. The Pico Neighborhood is not a proxy for people of color.
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10	31:22-24	As was addressed at length above in response to 30:5-13—which objections are here incorporated by reference—it is not true that at-large elections were “well understood” in 1992 to disadvantage minorities. It is also legally irrelevant, because mere awareness of a potential disparate impact cannot support a finding of intentional discrimination.
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13		Additionally, at-large elections are not per se disadvantageous to minority voters. They can be imposed or applied in such a way that they are disadvantageous, but the very purpose of the CVRA is to distinguish problematic at-large systems from unproblematic ones. If at-large systems were per se disadvantageous to minority voters, the statute would presumably be written as a simple prohibition of at-large voting schemes rather than a multi-part and complex statute expressed in over 1,000 words.
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17	31:24-26	Though the numbers for Dr. Leo Estrada’s districts were presented, no witnesses at trial said they had seen Dr. Estrada’s maps. And though Dr. Estrada said he could draw a district that was majority-Latino and African-American, no one knows what those districts looked like, or whether they conformed to the one-person-one-vote requirement. (See Tr. 3753:20–3754:13.) Even so, any such district would have fragmented the African-American and Asian populations of Santa Monica and would have been extremely harmful to those minority groups. (See Tr. 3794:23–3795:8.) Further, Latinos and African-Americans do not vote cohesively in Santa Monica, and so creation of a “coalition” district of Latinos and African-Americans would not have allowed either group to elect candidates of their choice. (See. Tr. 3796:21-3797:15.)
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23	31:26–32:3	The historical background and events leading up to the 1992 Council decision in question undermine plaintiffs’ theory that the City Council or the voters had discriminatory motives. The City had recently enacted measures beneficial to minorities, including changing the timing of its elections to coincide with national elections, prohibiting discrimination in private clubs, and requiring 30% of new construction to be set aside for affordable housing. (Tr. 3817:25–3818:22 [election timing]; Ex. 1816 at 86–87, Tr. 3819:22–3821:25 [ban on discrimination in clubs]; Ex. 1816 at 96, 3821:27–3822:11, 3433:19-25, 4220:3-7, 4245:14-21 [affordable-housing requirements].) Voters had also elected Vazquez in 1990 and
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	rejected a 1988 measure that would have reinstituted designated posts. (Tr. 32823:3–3824:10 [describing Prop. J in 1988]; Ex. 1381 at 4 [Vazquez elected]; see also Tr. 1716:9–1717:5, 3802:1-10 [Greenberg, an Asian-American, elected in 1992].)
32:4-8	As has been addressed in previous objections, including in response to 31:22-24, which objections are incorporated by reference here, it was not clear to the Council that the City’s electoral system was disadvantaging minorities, nor, for that matter, was it clear that any other system would do better—which is part of the reason why the Commission could not agree on a system to replace the City’s current at-large method of election. Additionally, even if councilmembers were aware of a connection between the City’s electoral system and minority representation, such awareness alone cannot support an Equal Protection claim.
32:9-14	Plaintiffs’ claim that there were substantive and procedural departures in 1992 is unusual and unsupported, because Dr. Kousser admitted there were no such departures. (Tr. 991:6-26; see also 3834:23–3835:5 [Dr. Lichtman identified no departures either].) And the relevant legislative history also belies plaintiffs’ contention that the Council discriminated against minorities in declining to put districts on the ballot. Even the Charter Review Commission did not favor districts, and for a variety of reasons, including: (i) “voting Latinos in the district might be too few to prevail, and Latinos outside the district would have less influence on the outcome than they do now”; (ii) African-Americans and Latinos in the targeted district would not vote cohesively but instead for their own candidates “in head-to-head competition,” with a white candidate possibly emerging as the winner; (iii) minorities were not sufficiently concentrated for districts to make sense; (iv) voters would lose influence over six of seven councilmembers; (v) councilmembers would focus only on their own districts rather than the good of the whole City; and (vi) voters would vote only every four years instead of every two. (Ex. 127 at 45–46 [too few to prevail, less influence; lack of African-American and Latino cohesion]; <i>id.</i> at 25 [insufficiently concentrated]; <i>id.</i> at 25, 45–47, Tr. 1699:6-23, 3832:16–3833:10 [loss of influence over most councilmembers, parochialism]; Ex. 127 at 25, Tr. 1701:18-24 [elections less frequent].) The Commission also had many reservations about ranked-choice voting, expressing, among other things, “serious doubts about its practicality.” (Ex. 127 at 52.)
32:14-17	<i>No</i> court has ever predicated a weighty finding of intentional discrimination on so little as plaintiffs’ misinterpretation of Zane’s remarks in 1992. And if the Freeholders in 1946 or councilmembers in 1992 had ever harbored a discriminatory purpose, they could have retained designated posts, prohibited bullet voting, reduced the size of the council, preserved off-year elections, and/or adopted a majority-vote requirement with run-offs. (See <i>Gingles</i> , 478 U.S. at 38, fn. 5; <i>Benavidez</i> , 2014 WL 4055366 at *21; Tr. 1315:24–1316:7, 1317:6–1318:22, 3015:2-24, 3016:4-13, 3017:4-11 [plaintiffs’ experts conceding that the current system has none of these dilutive features].) They did none of those things. (Ex. 1915 [summary of key opinions on lack of discriminatory intent in 1946]; Tr. 3661:4-16 [Dr. Kousser found no evidence of discriminatory intent in the

adoption of an election system in 1914 that was at least arguably unfavorable to minorities, but did find such evidence when the system was made demonstrably more favorable to minority voters].) There is no evidence that the City's current system of elections was adopted or maintained to discriminate against minorities.

Section VII: "REMEDIES" (page 32, lines 18 through line 36, line 2)

The City maintains that there is no basis for imposing a remedy of any kind. Indeed, the CVRA specifically allows consideration in determining the remedy of the number and concentration of minority voters, thus permitting consideration of whether Latino voters in Santa Monica are sufficiently concentrated to enable the formation of a majority-minority district. Because they are not, and because for reasons discussed above there has been no showing that they are of sufficient number for any of the alternative election systems to improve Latino voting strength, the CVRA itself compels the determination that there is no basis for imposing a remedy, a conclusion consistent with constitutional requirements as well. If there were a basis for a remedy, the parties have agreed that the Court should order a change to district-based elections. The City has contended that the Court should then order the City to propose a districting scheme for its review. Proceeding in this way would be in keeping with (1) California's Elections Code, which requires that a municipality ordered to adopt a districted system in a CVRA case draw districts with the input of its residents; (2) federal case law, which holds that the relevant legislative body must be given an opportunity to propose a remedy for judicial review; and (3) the City's status as a charter city, which requires local control over the method of elections (again, subject to judicial review).

Objectionable portion of PSOD	Specific objections/responses
32:19-20	There is no basis for a finding that the City of Santa Monica has violated either the California Voting Rights Act or the Equal Protection Clause, and therefore the Court has no cause to impose any remedy. This is a continuing objection to any and all findings of fact and/or propositions of law set out in the remedies section of the PSOD.
32:25–33:9	It may be appropriate for a court to supply a remedy where the relevant legislative body <i>refuses</i> to propose a remedy, as in <i>Bone Shirt</i> . But this is not that case. Reserving its positions that no remedy at all was appropriate, and that any order mandating a change in election system would automatically be stayed pending appeal, the City <i>did</i> propose a remedy here in its answering brief on remedies—that the Court order a change to a district-based election system, and that City be ordered to comply with

1		Section 10010 of the Elections Code by holding the required series of
2		public hearings to draw a districting plan with residents' input. That pro-
3		posal was consistent not just with California law, but also with federal
4		law.
5		Courts adjudicating statutory vote-dilution claims generally do not fash-
6		ion remedies in the first instance and instead leave the design of a remedy
7		to the relevant legislative body, subject to judicial review and approval.
8		Judicial relief is appropriate only where the legislative body fails to de-
9		liver a constitutionally permissible proposal. (See, e.g., <i>Westwego Citi-</i>
10		<i>zens for Better Gov't v. City of Westwego</i> (5th Cir. 1991) 946 F.2d 1109,
11		1123–24 [collecting cases]; <i>McGhee v. Granville Cty, N.C.</i> (4th Cir.
12		1988) 860 F.2d 110, 115 [confirming that the trial court “has properly
13		given the appropriate legislative body the first opportunity to devise an
14		acceptable remedial plan,” and holding that trial court erred in rejecting
15		the defendant’s proposed plan]; <i>United States v. City of Euclid</i> (N.D. Ohio
16		2007) 523 F.Supp.2d 641, 644 [“If a district court finds a defendant’s
17		method of election violates Section 2, . . . the defendant is given the first
18		opportunity to propose a remedial plan”]; <i>Cane v. Worcester Cty., Md.</i>
19		(D. Md. 1994) 840 F.Supp. 1081, 1091 [concluding that, “in exercising
20		its equitable powers, the Court should give the appropriate legislative
21		body the first opportunity to provide a plan that remedies the violation”].)
22		“Moreover, these principles do not apply only to state legislatures: this
23		Court has repeatedly held that it is appropriate to give affected political
24		subdivisions at all levels of government the first opportunity to devise
25		remedies for violations of the Voting Rights Act.” (<i>Westwego Citizens,</i>
26		<i>supra</i> , 946 F.2d at p. 1124.) In <i>Westwego Citizens</i> , for example, the court
27		held that a city’s at-large method of electing its aldermen violated Section
28		2 of the Voting Rights Act, but the Fifth Circuit held that “[i]t must be
		left to that body to develop, in the first instance, a plan which will remedy
		the dilution of the votes of the city’s black citizens,” and ordered that the
		trial court give the defendant city “120 days to develop and submit” a
		proposal. (<i>Ibid.</i>) This Court should similarly give the City of Santa Mon-
		ica the first opportunity to propose a districting plan.
33:12-22		While the Court may be able to choose from a range of remedies, those
		remedies must address the proven injury (there is none here) and remain
		subject to constitutional limitations.
		Plaintiffs’ quotation of <i>Jauregui</i> is misleading. The case holds that the
		remedial authority of California courts is as broad as that of federal courts
		in Section 2 cases, not that it is broader.
		The Court should not misread <i>Jauregui</i> to authorize the imposition of a
		remedy even where there is no evidence of vote dilution and where no
		remedy could enhance the voting power of the relevant minority group.
		Such a misreading would also impermissibly elevate racial considerations
		over all others, without a compelling state interest for doing so.
33:22–34:15		It is unclear, as a statutory and constitutional matter, what remedies are
		available to the Court, but one thing is certain: no purported remedy is
		authorized where it would not enhance the voting power of the relevant
		minority group.

1		In addition, the City here observes that, under long-established California law, the filing of any appeal will result in an immediate and automatic stay of any mandatory injunction issued by this Court. (See, e.g., <i>Byington v. Superior Court</i> (1939) 14 Cal.2d 68, 71 [“It is well settled that . . . an injunction mandatory in character is automatically stayed by appeal.”]; <i>Agric. Labor Bd. v. Superior Court</i> (1983) 149 Cal.App.3d 709, 716 [“California has had the rule that an appeal automatically stays mandatory injunctions for more than 100 years.”].) And without a doubt, any order requiring the City to hold a special election or otherwise depart from the status quo would necessarily be mandatory in character, and thus stayed on appeal. (See, e.g., <i>URS Corp. v. Atkinson/Walsh Joint Venture</i> (2017) 15 Cal.App.5th 872, 884 [explaining that mandatory injunctions are automatically stayed “to preserve the status quo pending appeals,” and an injunction is ““mandatory in effect if its enforcement would be to change the position of the parties and compel them to act in accordance with the judgment rendered””].)
2		In other words, the manner in which an injunction is phrased is not determinative; its effect is. And any injunction that would, for example, prohibit City Councilmembers from serving past a certain date would be prohibitory in name only (and mandatory in effect). Such an order would require the City to oust its current council—and therefore would be automatically stayed on appeal. (See, e.g., <i>Davenport v. Blue Cross of Cal.</i> (1997) 52 Cal.App.4th 435, 447 [“The substance of the injunction, not the form, determines whether it is mandatory or prohibitory,” and an injunction is deemed mandatory where it “compelled affirmative action which would substantially change the parties’ positions”].)
3	34:16-21	This is a misreading of <i>Jauregui</i> . That case holds that (1) the CVRA applies to charter cities, and to the extent a charter city’s at-large electoral system conflicts with Section 14027, the charter must yield to the CVRA, and (2) the trial court in a CVRA case has the authority to enjoin certification of election results under Section 14029, notwithstanding contrary procedural statutes of general application. The case does not stand for the proposition that the CVRA necessarily displaces every provision in a city charter or the proposition that the CVRA controls over all earlier-enacted California statutes. To the extent <i>Jauregui</i> held that courts may fashion remedies for charter cities after finding that their at-large electoral systems result in vote dilution, the case was wrongly decided. There may be a statewide interest in remedying vote dilution, but there is no such interest in remedying it by court order. Charter cities should be able to fashion their own remedies, subject to judicial review. (See, e.g., <i>Westwego Citizens for Better Gov’t v. City of Westwego</i> (5th Cir. 1991) 946 F.2d 1109, 1124; see also <i>State Bldg. & Constr. Trades Council v. City of Vista</i> (2012) 54 Cal.4th 547, 555 [charter city’s ordinances “supersede state law with respect to ‘municipal affairs.’”].)
4	34:22-25	Plaintiffs suggest that because the California Constitution is “supreme over state statutes,” this Court’s remedial analysis should be “unimpeded by state administrative statutes.” They presumably are gesturing at, without citing, the provisions in the Elections Code mandating public input on

1		a district plan (§ 10010) or requiring elections to be held only on certain
2		dates (§§ 1000, 1002, 1003, 1400), which provisions have been the sub-
3		ject of some dispute between the parties. (The City insists that these pro-
4		visions are mandatory and consistent with the CVRA and Constitution;
5		plaintiffs’ argument appears to be that the Constitution authorizes a court
6		to disregard these and other statutory provisions whenever it sees fit.)
7		Plaintiffs are inviting plain error. The doctrine that plaintiffs are refer-
8		encing permits courts to strike down state statutes if they impinge upon
9		constitutional rights without sufficient justification. (See, e.g., <i>Am. Acad-</i>
10		<i>emy of Pediatrics v. Lungren</i> (1997) 16 Cal.4th 307, 341 [striking down
11		a statute that required parental consent for abortions because it intruded
12		upon the Constitutional right of privacy, and no “compelling interest” jus-
13		tified such an intrusion].) But there is no authority whatsoever for the
14		proposition that courts may impose remedies to address alleged constitu-
15		tional violations without any regard for state statutes or decisional law.
16		Nor can plaintiffs plausibly argue that the relevant Elections Code re-
17		quirements are in “clear and unquestionable” conflict with the Equal Pro-
18		tection Clause, such that the statutes themselves could be deemed uncon-
19		stitutional. (<i>Cal. Housing Fin. Agency v. Elliott</i> (1976) 17 Cal.3d 575,
20		594 [setting forth the proper analysis for determining whether a statute is
21		unconstitutional].) Simply put, it is entirely possible to comply with both
22		the Equal Protection Clause and the Elections Code by proceeding in the
23		manner that the City has consistently proposed (that is, for the Court to
24		order the City to follow the process laid out by Section 10010 so that the
25		City would have the benefit of public input before drawing districts); the
26		Court should do so.
27	35:8-10 (<i>Harvell</i>)	The Eighth Circuit did not affirm the trial court’s rejection of defendant’s
28		plan because it would not “completely remedy the violation.” The trial
		court “erred in reading our en banc opinion as foreclosing any election
		plan that included an at-large voting component,” but its decision to adopt
		a competing plan was nevertheless not in error. (126 F.3d at 1040.)
	35:26–36:2	That a remedy should be implemented promptly does <i>not</i> mean either that
		(1) the City should not be granted an opportunity to follow Section 10010
		of the Elections Code to develop, with public input, an appropriate dis-
		tricting plan, or (2) any mandatory injunction issued by the trial court
		would not be stayed by the taking of an appeal.
		The cases cited by plaintiffs in their papers, including the <i>Williams</i> case
		cited in this portion of the PSOD, demonstrate that courts in Section 2
		cases give the relevant legislative body an opportunity to propose an ap-
		propriate remedy. (For more on this issue, please refer to the City’s re-
		sponses to 32:25–33:9, which objections are incorporated by reference
		here.) In <i>Williams</i> , for example, the court did not require immediate com-
		pliance with a particular map, and instead ordered the defendant municip-
		ality to submit a legislative plan for an upcoming special election. (734
		F.Supp. 1317, 1415.) The court explained that “[t]his is obviously the
		duty of the City Council, because this Court is not—and does not want to
		be—in the ‘plan-drawing business.’” (<i>Ibid.</i>)
		The taking of an appeal automatically stays any mandatory injunction,
		even if the injunction is phrased as prohibitory. (For more on this issue,
		please refer to the City’s responses to 33:22–34:15, which objections are

incorporated by reference here.) Plaintiffs have yet to supply any reason why that rule would not apply in this case—because there is none.

Section VIII: “The Appropriate Remedy In This Case Is The Prompt Implementation Of The Seven-District Plan Presented at Trial” (page 36, line 3 through page 39, line 14)

Adopting plaintiffs’ proposed remedy would be per se error. Section 10010 of the Elections Code requires that the City be given the opportunity to solicit public input through a series of hearings on a districting plan. Federal Section 2 cases and the City’s status as a charter city compel the same result. If the Court adopts its tentative ruling and finds the City liable, then it ought to order the City to follow the Section 10010 process promptly.

In a case purportedly about inclusivity, it is incongruous that plaintiffs insist on the Court rubber-stamping a districting plan drawn up by an expert with the input of scarcely any Santa Monica residents. Plaintiffs’ argument appears to be that the City somehow waived its right to proceed under Section 10010, but nothing in that statute indicates that the hearings it requires are optional, nor can the statute, which calls for hearings *after* a court “impose[s]” a switch to elections, be logically read to require that a city hold hearings *before* any such imposition.

Finally, plaintiffs insist that the Court may order an election to take place at any time, but this is not so for both legal and practical reasons. If the Court is intent on setting a date for a special election, it should select the first date made available under the Elections Code—November 5, 2019.

Objectionable portion of PSOD	Specific objections/responses
36:5-9	<p>There is no evidence that alternative at-large systems (cumulative voting, limited voting, or ranked-choice voting) would enhance Latino electoral strength. Plaintiffs point to none in the PSOD. The City’s objections on this issue, presented above in response to 21:10-22, are incorporated by reference here.</p> <p>The City maintains that no remedy is necessary or appropriate here, because there is no evidence of a violation and no evidence that any available remedy would actually improve Latino voting strength. Nevertheless, the City did state that if a remedy were necessary and appropriate, it would prefer districts over an alternative at-large scheme. The City did not state that districts are preferable because of “the local context in this case – including socioeconomic and electoral patterns” and “the voting experience of the local population.” Indeed, these phrases are so ambiguous that the City cannot be sure what they mean. But the City does agree</p>

	that districts would be preferable to alternative at-large remedies on account of “election administration practicalities.” For example, it is not clear that cumulative voting is compatible with California law, nor is it clear that voting machines currently in use are capable of processing cumulative or ranked-choice ballots. A districted system, by contrast, would not require new voting machines (though it would, the City has consistently argued, decrease Latino voting strength, undermine democratic values, make elected officials less accountable to the entire electorate, and diminish the vitality of civic life throughout Santa Monica).
36:11 (“only one district plan”)	The City was under no obligation to present a districting plan of its own, especially not before it had been shown to be liable under the CVRA (which, under a proper reading of the evidence and law, it still has not). What is more, the City could not have crafted a districting plan without obtaining public input through the process called for by Section 10010. Plaintiffs have suggested elsewhere that the City could have undertaken that process at any time but have yet to explain how the City was at any point obligated to do so. Plaintiffs’ theory appears to be that the City waived its right to do so, which has no basis in the statutory text or anything else. In fact, following Section 10010 <i>after</i> , rather than before, an adverse judgment is precisely what the statute contemplates. By its own terms (subdivision (c)), it “applies to, but is not limited to, a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election.” The court cannot “impose” a “change from an at-large method of election to a district-based election” except through a judgment; there is presently no such judgment. What is more, following the Section 10010 process and holding public hearings on districts, even as the City was simultaneously vigorously litigating this CVRA case, would have done little more than confuse voters. For these reasons, the City proposed that it be allowed to follow Section 10010 after any judgment against it became final.
36:11-19	<p>The districts drawn by Mr. Ely cannot be implemented without violating California law. Section 10010 of the Elections Code demands an inclusive, democratic process of public engagement, whereby districts are drawn and approved only after the input of City residents. No such process has been followed here, and it would be error to rubber-stamp the district map drawn by Mr. Ely. In preparing that map, Mr. Ely relied on the viewpoint of a Santa Monica resident, Patricia Crane, who is not Latina, does not reside in the Pico Neighborhood, has no expertise or experience in districting, was not selected by the electorate in any form or fashion, and indeed was a primary advocate for a recent development-related political proposal that was not adopted by the voters at the polls. (Tr. 400:14–401:6, 2685:19-23, 2687:18-2688:4, 2691:21–2692:3.) This was a far cry from the high standard of extensive community input required by the California Elections Code.</p> <p>Contrary to Plaintiffs’ claim, race was a predominant factor in drawing the districts. As Mr. Ely conceded at trial, he drew the purported remedial Pico Neighborhood district to maximize, to the extent possible, its percentage of Latino voters. (Tr. 405:14–407:18.)</p>
36:20-22	Such testimony, from Mr. Levitt, was irrelevant, because the jurisdictions to which he compared Santa Monica, including San Juan Capistrano,

	<p>were not remotely comparable. Among many other differences between the two, it was possible in San Juan Capistrano to create a district where the Latino share of the voting population in the purportedly remedial district was 44 percent. Additionally, it is far from clear that even a district with a minority voting population that large is truly remedial; no court had the opportunity to take up the question, as the case was resolved by settlement.</p> <p>Mr. Levitt's attempt to analogize Santa Monica to Highland was similarly misplaced. Unlike in Santa Monica, the Latino population in Highland was sufficiently compact to create at least one majority-Latino district providing a remedy for the dilution alleged in that case. (Tr. 2934:13-18.)</p> <p>Plaintiffs had no evidence that a 30 percent Latino district could allow Latinos to elect candidates of their choice to a greater extent than they do under the current at-large system. In fact, Mr. Levitt could not identify a single judicially created district in which the citizen-voting-age population of the relevant minority group was as low as 30 percent. (Tr. 3092:24–3093:15, 3095:3-22.) And Mr. Ely conceded that this case is the first time that he had ever proposed at trial a remedial district in which the relevant minority group accounted for less than 50 percent of eligible voters. (Tr. 404:13-17.)</p>
36:22-25	<p>Although it was plaintiffs' practice to move to admit all other secondary sources, plaintiffs did not do so with respect to this book, or even address it on direct examination with their experts. The Court should disregard it. What is more, the book is scarcely a thorough canvass of authorities or case studies. The section cited by plaintiffs is a discussion of a voluntary—not court-ordered—districting process undertaken by the City of Pomona in which the book's author was involved. (The city had prevailed in voting-rights litigation, but some councilmembers subsequently backed districting to further their own political interests.) The author notes that an African-American candidate won election in a district that was approximately one-third African-American. The book hardly suggests, much less proves or documents, that districts with small populations of eligible minority voters will as a matter of course be able to elect candidates of their choice. That they generally will not, in fact, is obvious—and the very reason why the Supreme Court has required evidence of a constitutionally permissible majority-minority district at the outset of every Section 2 case.</p>
36:25-27	<p>For reasons documented several times above, including in response to 21:10-22, which objections are incorporated by reference here, plaintiffs did not prove at trial, and have not satisfactorily shown in their PSOD, that any alternative method of election would enhance Latino voting strength. Their repeated assertion to the contrary in the PSOD does not cure these evidentiary and analytical shortcomings.</p>
37:1–37:3	<p>The flaws in Mr. Ely's analysis have already been catalogued at length in response to 21:10-22, which objections are incorporated here by reference.</p>

37:4-6	It is true but irrelevant that the Latino proportion is greater in the Pico Neighborhood district than in the City as a whole. It is irrelevant because the Latino citizen-voting-age population is still far too low for Latino voters to be able to elect a candidate of their choice. Mr. Levitt, plaintiffs' expert on the remedial effectiveness of their proposed district, could not identify a single judicially created district in which the citizen-voting-age population of the relevant minority group was as low as 30 percent. (Tr. 3092:24–3093:15, 3095:3-22.) This Court would be the first in the history of voting-rights litigation to create a purportedly remedial district where the relevant minority group accounted for such a low percentage of the citizen-voting-age population.
37:6-10 (“That . . . 50%,”)]	Plaintiffs' invocation of <i>Georgia v. Ashcroft</i> is misplaced. That was a <i>Section 5</i> (preclearance) case, not a <i>Section 2</i> (vote dilution) case. The Supreme Court has repeatedly held that “[t]he inquiries under §§ 2 and 5 are different” and “the lack of [influence] districts cannot establish a § 2 violation.” (<i>Bartlett v. Strickland</i> (2009) 556 U.S. 1, 25 [collecting cases].) In other words, the Supreme Court has never set out a numerical standard for “influence” districts under Section 2. In fact, federal courts have repeatedly sounded a note of caution about the dangers of creating such districts. “Influence districts” are unconstitutional because they reflect a lack of injury—and thus a lack of any compelling state interest to classify persons on the basis of race. If Section 2 protected mere “influence,” “it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions.” (<i>LULAC, supra</i> , 548 U.S. at p. 446.) Influence claims are inherently unmanageable, as there is no reasonable lower bound for the number of voters who could be said to “influence” the outcome of an election: “A single voter is the logical limit.” (<i>Illinois Legislative Redist. Comm’n v. LaPaille</i> (N.D.Ill. 1992) 786 F.Supp. 704, 716.) Federal courts therefore reject influence districts in favor of an objective, constitutionally sound marker of injury: legally cognizable vote dilution, as shown by the possibility of a majority-minority district. “[A] minority group cannot be awarded relief on a vote dilution claim unless it can demonstrate that a challenged structure or practice impedes its ability to determine the outcome of elections.” (<i>Dillard v. Baldwin Cty. Comm’rs</i> (11th Cir. 2004) 376 F.3d 1260, 1267 [rejecting influence districts as viable remedy and collecting cases showing “‘influence dilution’ concept . . . has been consistently rejected by other federal courts”].)
37:10-11 (“Third, . . . electoral strength”)	Ambiguous. It is unclear what, if any, testimony in the record supports plaintiffs' contention that Latinos are especially “politically organized in a manner that would more likely translate to equitable electoral strength.” As noted repeatedly above, Latinos account for too small a percentage of the citizen-voting-age population in any district proposed by plaintiffs, including the Pico Neighborhood district, for a districted system to increase Latino voting power. Accordingly, it is irrelevant whether Latinos in that district would or would not prove to be politically motivated; they would still require substantial crossover support from white voters to elect candidates of their choice. Because that is also true under the present system, and because there is no evidence that Latinos would have greater electoral power under plaintiffs' districted scheme, there is no injury to remedy.

37:12-13 ("Fourth, . . . Santa Monica.")	As noted in response to 19:20–20:4, which objections are incorporated by reference here, there is no evidence that Latino candidates can raise money only from other Latinos, or that Latinos have difficulty raising large sums in Santa Monica even for exogenous local offices. It is unreasonable to suppose that a minority candidate can raise money only from his or her own "community." A candidate's race or ethnicity is not determinative of the sources of his or her financial support. In any event, although white residents have higher average incomes and wealth than Latinos, that is not necessarily true of particular candidates.
37:14–38:1 ("Though . . . discussed at trial.")	As noted in the responses to 36:11, which objections are incorporated here by reference, including (1) the City was not obligated to propose a remedy at trial; (2) the City <i>did</i> comply with the Court's November 8 order and, reserving its positions that no remedy at all was appropriate, and that any order mandating a change in election system would automatically be stayed pending appeal, <i>did</i> propose a remedy in its answering brief on remedies—namely, that the Court order a change to district-based elections and order the City to follow Section 10010 of the Elections Code and order the City to hold a series of public hearings on a potential districting plan; and (3) the City could not have followed Section 10010 before the issuance of an adverse judgment, as doing so while simultaneously litigating this case would have sowed confusion among the voters.
37, fn. 17 & 38, fn. 18	<p>As the City has noted several times, including in response to 36:11, which objections are incorporated here by reference, it was under no obligation to propose a district plan at any time before a judgment. Plaintiffs' suggestion that the City could have complied with Section 10010 in a matter of days is at odds with the very purpose of that statute—to provide for an open, democratic process for fashioning a districting plan. It makes no sense that plaintiffs would be hostile to that process, especially because one of the themes of their case is that the City's electoral system is inadequately inclusive. Scheduling meetings in quick succession over Thanksgiving week would have been a surefire recipe for obtaining almost no public input. Districts should be drawn in a thoughtful, open process, not in the dead of night without residents' voices being heard.</p> <p>For reasons set forth in response to 32:25-33:9 and 34:22-25 above, which objections are incorporated here by reference, there is no basis for plaintiffs argument that Section 10010 does not apply and that the Court can ignore it in imposing a remedy.</p>
38:1-5	<p>Plaintiffs suggest that the Court may bypass this mandatory provision and create a remedy without any input from the City because, in their telling, the City has not proposed a remedy. That is, as a factual matter, false, for the reasons explained in response to 36:11 and 37:14–38:1, which objections are incorporated by reference here.</p> <p>Unlike <i>Bone Shirt</i>, this is not a case in which the Court cannot, as is the general practice in vote-dilution cases, defer to the relevant legislative body to draw a districting plan for the Court's approval. The Court should follow the general practice of deference (subject to judicial supervision, of course) and, for the reasons stated in response to 32:25–33:9, which objections are incorporated here by reference, give the City the oppor-</p>

	tunity to comply with Section 10010 of the Elections Code. That provision is mandatory and requires that the City be given a chance to draw districts with the input of residents and to present those districts to the court for approval.
38:6–39:4	For reasons explained throughout these objections, the City’s electoral system is not unlawful, and therefore no remedy is appropriate. Further, any order compelling the City to hold a special election would be a mandatory injunction and would automatically be stayed by the taking of an appeal.
39:5-6	The Court should not cite a City webpage laying out the 2016 election calendar. It should instead cite the relevant law. Under Elections Code Section 12101, notice must be published not “later than the 113th day before any municipal election to fill offices.” Under Section 10220, nominations for office are due no “later than the 88th day before a municipal election.” Under Santa Monica Municipal Code Section 11.04.010, nominations are due no later than the “close of business on the eighty-eighth day before a municipal election.”
39:7-8	The timing of the issuance of any judgment is for the Court to decide. The City requests only that the Court give full and fair consideration to these objections before entering any judgment in favor of plaintiffs, and continues to believe that any such judgment would be unwarranted and out of step with the text of and precedent interpreting the CVRA and Equal Protection Clause.
39:8-9	A special election cannot be held on the arbitrary date of July 2, 2019. Santa Monica’s City Charter provides for “special municipal elections” and states that except as otherwise provided by ordinance, such elections shall be held in accordance with the provisions of the Election Code. (Santa Monica City Charter, §§ 1401, 1403.) Santa Monica’s Municipal Code in turn authorizes special election dates to be set “on an established election date as provided for by the California Elections Code” or on any other date “as permitted by law.” (Santa Monica Muni. Code, § 11.04.180.) Effective January 1, 2019, absent circumstances not present here, the Elections Code mandates that all municipal elections, including special elections, to fill municipal offices must be held on established election dates that, for 2019, would be March 5, 2019, or November 5, 2019. (<i>See</i> Elec. Code, §§ 1000, subd. (b) & (c), 1002, 1003, 1400.) Complying with the time requirements for nominations and other procedural prerequisites to an election (addressed above in response to 39:5-6) would render the March 5, 2019, election date impracticable. As a result, the earliest possible date for a special election to elect a new City Council would be November 5, 2019 Requiring a City Council election before November 2020 could also have other serious unintended consequences. As Dr. Lichtman explained at trial, since 1984, the City has held its elections “on cycle” in November in even-numbered years, to coincide with presidential and gubernatorial elections—previously, the City’s elections had been held “off cycle,” in April in odd-numbered years. (Tr. 3817:6–3818:10; see Ex. 1378-2.)

	<p>This change to on-cycle elections was “[e]xtremely beneficial to minorities” because “[i]t is well established in the literature that elections that occur in odd numbered years significantly dampen voter turnout. . . . [T]he biggest beneficiaries in this jump in turnout are traditionally low turnout groups, notably Latinos and Asians. . . . So [holding on-cycle elections in November in even-numbered years] generally makes municipal elections more participatory and specifically helps minorities, particularly Asians and Latinos.” (Trial Tr. 3818:11-3819:3.)</p> <p>Largely for these same reasons, the California Legislature enacted the Voter Participation Rights Act, effective January 1, 2016, which prohibits off-cycle elections in jurisdictions that experience a significant decrease in voter turnout. Elections Code section 14052 provides that “a political subdivision shall not hold an election <i>other than on a statewide election date</i> if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout.” (Italics added.) And, as noted above, effective January 1, 2019, a “statewide election date” must be either in November or March of an even-numbered year. (Cal. Elec. Code, § 1001.)</p> <p>There are two other reasons not to hold an election on July 2, 2019, even if it were lawful to do so. First, that date falls on a holiday week, and so turnout would likely be substantially dampened. Second, the City no longer has the ability to contract to conduct its own elections. The only provider of this service has gone out of business (most likely as a consequence of the new law mandating that elections be held only on two dates, on which the County of Los Angeles runs elections. As a result, the City would need to contract with the County to run an election on July 2, but the County is not scheduled to run an election on that date. The earliest available dates on which the County is scheduled to run an election are July 20 (an election for a local entity) and August 13 (a runoff for Los Angeles City Council District No. 12), but the City would have to request County authorization for any City election to be run at the same time.</p> <p>Additionally, as noted throughout these objections, an order to hold a special election would be a mandatory injunction automatically stayed by the taking of an appeal.</p>
39:9-14	Any order prohibiting all current councilmembers from serving past a certain date would be prohibitory in name, but mandatory in effect, and therefore stayed by the taking of an appeal. If all councilmembers were to leave the Council, the City would be without a governing body. And because there can be no question that an order to hold a special election under a districted scheme would be stayed by the taking of an appeal, an order prohibiting councilmembers from serving past a certain date would also need to be stayed, lest the City be left in the intolerable position that it have no elected officials to make important decisions.
39:16-18	For reasons explained throughout these objections, the City’s electoral system is not unlawful, and therefore no remedy is appropriate.
39:18-21	For reasons explained throughout these objections, the City should not be ordered to implement plaintiffs’ seven-district map, and should instead be

ordered to hold the series of public meetings called for by Section 10010
for the development of a districting plan.

DATED: January 18, 2019

Respectfully submitted,
GIBSON, DUNN & CRUTCHER LLP

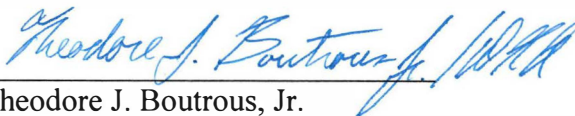
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EXHIBIT A

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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF LOS ANGELES**

20 PICO NEIGHBORHOOD ASSOCIATION and
MARIA LOYA,

21 Plaintiffs,

22 v.

23 CITY OF SANTA MONICA,

24 Defendant.

CASE NO. BC616804

**CITY OF SANTA MONICA'S PROPOSED
VERDICT FORM**

Complaint Filed: April 12, 2016

Trial Date: August 1, 2018

Assigned to Judge Yvette Palazuelos

Dep't 28

This proposed verdict form is designed to be read in tandem with the City’s closing brief. “VF” citations in the closing brief refer to the numbered paragraphs in this proposed verdict form.

I. Plaintiffs’ cause of action for violation of the California Voting Rights Act

A. Did plaintiffs prove legally significant racially polarized voting (RPV) in Santa Monica elections?

___ Yes x No

(IF THE ANSWER TO QUESTION I-A IS NO, JUDGMENT ON PLAINTIFFS’ CVRA CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA, AND THE COURT SHOULD PROCEED TO QUESTION II; IF THE ANSWER IS YES, PROCEED TO QUESTION I-B.)

To answer this question, the Court must (a) identify the Latino-preferred candidates in each relevant election through the three-step analysis described below; (b) determine whether any of those candidates lost; and (c) if any did, determine whether such candidates lost because of white bloc voting. Once those three questions are answered, the Court must determine whether white bloc voting has “usually” caused the defeat of Latino-preferred candidates, which means at least that such candidates lost more often than not. Absent such a finding, any “racially polarized voting” is not legally significant. In other words, mere differences in voting between whites and Latinos are not a sufficient basis for liability; those differences must “usually” cause the defeat of Latinos’ preferred candidates.

Statement of Law (overview of legally significant RPV)

One element that plaintiffs must prove is “racially polarized voting.” (Elec. Code, § 14028.) That term is defined by reference to federal case law. (*Id.*, § 14026, subd. (e).) In *Thornburg v. Gingles*, the Supreme Court set out three “preconditions” to statutory vote-dilution claims, the second and third of which define legally significant racially polarized voting. Those two preconditions are: (2) “the minority group must be able to show that it is politically cohesive,” and (3) “the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority’s preferred candidate.” (478 U.S. 30, 50–51, citations omitted.) Thus, to determine whether plaintiffs have proven legally significant racially polarized voting, the Court must answer three factual questions: (1) who were the Latino-preferred candidates in each election? (2) Did those candidates win or lose? (3) If they lost, did they lose because of white bloc voting? Once those three questions have been

answered, the Court will be able to determine whether “the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate.” (*Id.* at 51.)

1. In each relevant election, did Latinos prefer (i.e., vote cohesively for) one or more candidates? If so, which candidates?

	First Latino-preferred candidate	Second Latino-preferred candidate	Third Latino-preferred candidate	Fourth Latino-preferred candidate
1994 ¹	Tony Vazquez	Bruria Finkel	Pam O'Connor	
1996	Michael Feinstein	Kelly Olsen	Ken Genser	
2002	Josefina Aranda	Kevin McKeown		
2004	Maria Loya			
2008	Ken Genser			
2012	Tony Vazquez	Terry O'Day	Ted Winterer	Gleam Davis
2016	Oscar de la Torre	Tony Vazquez		

Statement of Law (identifying Latino-preferred candidates in three steps)

“The proper identification of minority voters’ representatives of . . . choice is critical.” (*Colins v. City of Norfolk* (4th Cir. 1989) 883 F.2d 1232, 1237.) “[P]laintiffs must prove, on an election-by-election basis, which candidates are minority-preferred.” (*Clay v. Bd. of Educ. of City of St. Louis* (8th Cir. 1996) 90 F.3d 1357, 1361.)

This analysis is not as simple as just identifying minority candidates. Justice Brennan explained in *Gingles* that the race of the candidate is irrelevant because “it is the *status* of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate, that is important.” (478 U.S. at 67–68 (plurality opn.)) Ever since, courts have uniformly rejected the proposition that a minority group cannot prefer a candidate of a different race or ethnicity. “Such a rule would be clearly contrary to the plurality opinion” in *Gingles*, and inconsistent with “the language of § 2.” (*Sanchez v. Bond* (10th Cir. 1989) 875 F.2d 1488, 1495.) The CVRA, too, makes plain that the touchstone of the

¹ The election years are those selected by plaintiffs—namely, those in which plaintiffs identified a Latino-surnamed candidate.

1 racial-polarization analysis is not the race or ethnicity of the candidate, but instead the preferences of
2 the voters; the statute therefore defines RPV in terms of voter preference, not candidate ethnicity.
3 (§ 14026(e); see also § 14028(b) [focusing on “support . . . from members of a protected class”].)

4 The presumption that voters necessarily prefer candidates of their own race “would itself con-
5 stitute invidious discrimination of the kind that the Voting Rights Act was enacted to eradicate, effec-
6 tively disenfranchising every minority citizen who casts his or her vote for a non-minority candidate.
7 To acquiesce in such a presumption would be not merely to resign ourselves to, but to place the impi-
8 matur of law behind, a segregated political system. . . .” (*Lewis v. Alamance Cty., N.C.* (4th Cir. 1996)
9 99 F.3d 600, 607; see also *NAACP, Inc. v. City of Niagara Falls, N.Y.* (2d Cir. 1995) 65 F.3d 1002,
10 1016 [“declin[ing] to adopt an approach precluding the possibility that a white candidate can be the
11 actual and legitimate choice of minority votes,” as such a ruling “would project a bleak, if not hopeless,
12 view of our society” and would “presuppose the inevitability of electoral apartheid”—a result particu-
13 larly incongruous where courts are “interpreting a statute designed to implement the Fourteenth and
14 Fifteenth Amendments to the Constitution”]; *Clay*, 90 F.3d at 1361 [“The notion that a minority can-
15 didate is the minority preferred candidate simply because of that candidate’s race offends the principles
16 of equal protection.”].) In *Ruiz v. City of Santa Maria* (9th Cir. 1988) 160 F.3d 543, 551, the Ninth
17 Circuit joined eight other circuits “in rejecting the position that the ‘minority’s preferred candidate’
18 must be a member of the racial minority.”

19 Although *Gingles* squarely rejected the “invidious” presumption that minorities can prefer only
20 candidates of their own race or ethnicity, it did not set out clear guidelines for identifying minority-
21 preferred candidates. Lower courts have filled in these gaps, prescribing a method of identifying La-
22 tino-preferred candidates that can be summarized in three steps.

23 **First, the Court should identify the candidates who would have won if Latinos had been**
24 **the only voters.**

25 “In the multi-seat contests at issue here, the identification of minority-preferred candidates is
26 complex. Because a voter can cast more than one vote, minority voters may (but will not necessarily)
27 have a second (or third [or fourth]) candidate of choice.” (*Mo. State Conf. of the NAACP v. Ferguson-*
28 *Florissant Sch. Dist.* (E.D.Mo. 2016) 201 F.Supp.3d 1006, 1041.) Further complicating matters is that

1 some voters may choose to “single-shot” or “bullet” vote—that is, vote for a single strongly preferred
2 candidate instead of diluting their support for that candidate by casting equally valuable votes for other
3 candidates as well. “A critical question, then,” in light of these complexities, “is how to identify
4 whether minority voters in fact have a second or third candidate of choice in a given election.” (*Ibid.*)

5 “[L]ooking only at the top-ranked candidate does not capture the full voting preference picture
6 in the context of a multi-seat election because it disregards the fact that multiple seats are available in
7 each election, and with that the possibility that minority voters prefer more than one candidate.” (*Id.*
8 at 1047.) To accommodate this possibility, many courts, including the Ninth Circuit, define as “mi-
9 nority-preferred” any “candidate who receives sufficient votes to be elected if the election were held
10 only among the minority group in question.” (*Ruiz v. City of Santa Maria* (9th Cir. 1988) 160 F.3d
11 543, 552; accord *Lewis*, 99 F.3d at 614; *Clay*, 90 F.3d at 1361–1362.) Under this approach, and based
12 on weighted-ecological-regression estimates provided by Dr. Kousser, the City Council candidates who
13 received sufficient votes to be elected if the election were held only among Latino voters are:

- 14 • 1994 – Vazquez (145.5%), Finkel (122.4%), O’Connor (113.2%);
- 15 • 1996 – Feinstein (149.1%), Olsen (106.4%), Genser (96.5%), Bloom (51.9%);
- 16 • 2002 – Aranda (82.6%), McKeown (76.8%), O’Connor (58.6%);
- 17 • 2004 – Loya (106%), Bloom (54.9%), Hoffman (40.0%), Genser (39.4%);
- 18 • 2008 – Genser (55.1%), Bloom (49.7%), Piera-Avila (33.3%), Rubin (20.9%);
- 19 • 2012 – Vazquez (92.7%), O’Day (63.9%), Winterer (56.7%), G. Davis (50.2%); and
- 20 • 2016 – de la Torre (88.0%), Vazquez (78.3%), O’Day (55.3%), G. Davis (43.8%).

21 **Second, the Court should determine whether any of the identified candidates received**
22 **“significantly” higher support than others.**

23 Identifying all the candidates who received sufficient votes from the relevant minority group is
24 not the end of the analysis, because sometimes that group might prefer one or more of those candidates
25 more strongly than others. For that reason, courts have held that it is error to “treat[] as ‘minority-
26 preferred’ successful candidates who had significantly less [minority] support than their unsuccessful
27 opponents.” (*Niagara*, 65 F.3d at 1017.) Conversely, “if the unsuccessful candidate who was the first
28

choice among minority voters did not receive a ‘significantly higher percentage’ of the minority community’s support than did other candidates . . . , then the latter should also be viewed . . . as minority-preferred candidates.” (*Levy v. Lexington Cty.* (4th Cir. 2009) 589 F.3d 708, 716; see also *Niagara*, 65 F.3d at 1018 [although black voters’ top choice lost, “support for that candidate was not dramatically higher than support for one of the successful candidates,” such that “there is therefore no reason to discount the 1975 general election”].) “The level of support that may properly be deemed ‘substantial’ will vary . . . depending on the number of candidates on the ballot and the number of seats to be filled.” (*Lewis*, 99 F.3d at 614, fn. 11; see also *Levy*, 589 F.3d at 716–717 [rejecting trial court’s unsupported conclusion that a 15-percentage-point difference was “significant” and remanding for the court to consider the context of each election before deciding meaning of “significant”].) Applying this approach, based on Dr. Kousser’s weighted-ecological-regression estimates, eliminates seven candidacies in Plaintiffs’ seven selected elections:

- **1994:** none eliminated (three candidates, including Vazquez, have point estimates over 100%);
- **1996:** Bloom (52%) eliminated, as three candidates have point estimates near or above 100%;
- **2002:** O’Connor eliminated (Aranda and McKeown win a significantly higher share of votes, and Aranda loses);
- **2004:** Bloom (55%), Hoffman (40%), and Genser (39%) eliminated because Loya wins a significantly higher share of Latino votes (106%) and loses;
- **2008:** none eliminated (top four candidates have point estimates between 21% and 55%);
- **2012:** none eliminated (Latinos’ top four candidates all win); and
- **2016:** O’Day and Davis eliminated (de la Torre and Vazquez win a significantly higher share of votes, and de la Torre loses)

Third, the Court should disregard candidates who won such a small share of the Latino vote that they cannot reasonably be described as “Latino-preferred.” Some courts hold that candidates cannot be minority-preferred unless they win at least 50% of the minority group’s votes. (E.g., *Niagara*, 65 F.3d at 1019.) Others qualify that rule by holding that candidates winning less than 50% could be deemed minority-preferred, but only given further qualitative evidence that they were the representatives of choice for the minority group. (E.g., *Lewis*, 99 F.3d at 614.)

Following a bright-line rule that a candidate must win at least 50% of the minority vote to be considered minority-preferred—or at least a rule that a candidate winning less than 50% of the minority vote is not necessarily minority-preferred—has two key advantages. First, it avoids the “unavoidably malleable, highly subjective inquiry” of “assess[ing] candidates’ authenticity in matters racial.” (*Niagara*, 65 F.3d at 1018–1019.) Second, the rule “prevents a candidate with tepid minority support from being considered in a *Gingles* prong three analysis”; without such a backstop, courts would “open[] the door for candidates only marginally favored by minority voters to count in the *Gingles* equation.” (*Ruiz*, 160 F.3d at 561 (Hawkins, J., concurring in part and dissenting in part) [criticizing majority opinion for not adopting a 50% cutoff in addition to bright-line rule that minority-preferred candidates are those who would have won had members of that minority group been the only voters].) This step removes Bloom, Piera-Avila, and Rubin in 2008 (who all fell short of the 50% threshold).

As a result, after all three steps in the analysis are completed, the Latino-preferred candidates in each of the seven elections selected by Plaintiffs are:

- 1994 – Vazquez (145.5%), Finkel (122.4%), O’Connor (113.2%);
- 1996 – Feinstein (149.1%), Olsen (106.4%), Genser (96.5%);
- 2002 – Aranda (82.6%), McKeown (76.8%);
- 2004 – Loya (106%);
- 2008 – Genser (55.1%);
- 2012 – Vazquez (92.7%), O’Day (63.9%), Winterer (56.7%), G. Davis (50.2%); and
- 2016 – de la Torre (88.0%), Vazquez (78.3%)

Evidence Admitted

(to support City’s position on the identification of Latino-preferred candidates in three steps)

1. Tr. 1199:14–1208:1 (Dr. Kousser counting a white candidate as “Latino-preferred” in the *Highland* case); Tr. 3052:12–14, 3060:19–21 (Mr. Levitt agreeing that white candidates can be Latino-preferred, and that there can be more than one Latino-preferred candidate in an election).

2. Ex. 275 (point estimates of Latino support for three white candidates, Feinstein, Olsen, and Genser, range from 96.5% to 149.1%, whereas point estimate of Latino support for Alvarez is 22.2%); Tr. 757:18–27 (Dr. Kousser focusing on Alvarez); see also Tr. 754:2–9, 769:23–25, 804:18–21 (Dr.

Kousser interpreting results near or above 100% to mean that the candidate appeared on roughly all Latino ballots); Tr. 3057:23–3059:18 (Mr. Levitt agreeing that roughly all Latino voters supported three white candidates).

3. Ex. 284, Tr. 1780:26–1781:4, 3070:7–3071:5 (point estimate of Latino support for Piera-Avila is 33.3%, less than the point estimate of Latino support for two white candidates, Bloom (49.7%) and Genser (55.1%)).

4. Tr. 1782:5-12 (top four); Tr. 776:14–778:12 (strategic voting).

5. Ex. 281 (point estimate of Latino support for Loya is 106%); Ex. 287 (point estimate of Latino support for Vazquez is 93%); Ex. 290 (point estimates of Latino support for Vazquez and de la Torre are 78% and 88%, respectively).

6. Ex. 1653A at 29–30 (point estimate of Latino support for McKeown is 52%, whereas point estimate for Muntaner is just 8%); see also Ex. 302 at 131 (Muntaner appears on Census Bureau’s list of Latino surnames).

7. Ex. 1652 at 72, Ex. 1653A at 21–30, Tr. 2313:2-10, 2315:23–2316:1 (Dr. Lewis’s ER estimates); see also Ex. 1652A at 2, Ex. 1653A at 43–47, Tr. 2319:20–2320:6 (Dr. Lewis’s EI estimates); see also Ex. 272, Ex. 275, Ex. 278, Ex. 281, Ex. 284, Ex. 287, Ex. 290 (Dr. Kousser’s ER estimates).

8. Tr. 4303:17-20, 4305:19–4306:26, 4350:9–4360:5 (colloquy and evidence under Evid. Code, § 1311).

9. Tr. 727:4-11, 3030:9-12.

10. Compare Ex. 272, Ex. 275, Ex. 278, Ex. 281, Ex. 284, Ex. 287, Ex. 290 (Dr. Kousser’s weighted-ER estimates), with Ex. 1653A at 26–30 (Dr. Lewis’s weighted-ER estimates). The parties disagree not on the numbers themselves, but on how to interpret them.

11. Ex. 278 (confidence interval for Aranda ranges from 57.9% to 107.3%; confidence interval for McKeown ranges from 31.7% to 121.9%); Tr. 3064:12-21 (Mr. Levitt agreeing that there is “substantial overlap between Ms. Aranda and Mr. McKeown’s support from the Latino electorate”).

12. Tr. 2024:27–2025:18, 2038:19–2039:10, 2063:11–2064:21, 2297:10-17.

13. Tr. 2230:26–2236:11 (ER and EI depend on assumptions that, if wrong, bias their results),

2238:2-22 (ER depends on assumption that all politics is ethnic; neighborhood model depends on assumption that all politics is local); Tr. 2241:6-17 (no difference in the two methods apart from these competing assumptions); Ex. 1652 at 58, 61–62, Tr. 2249:12–2258:3, 2278:17-26 (showing ER, EI, and the neighborhood model are all inaccurate through differences between modeling estimates and real-world results); Tr. 2242:8–2243:24, 2253:4-13, 2273:27–2274:5 (ER overvalues ethnicity, neighborhood model undervalues it, and the truth is somewhere in between); see also Ex. 1652 at 51, Tr. 370:16–371:11, 371:21-26, 372:16-19, 374:14-17, 2266:6–2270:21 (surname matching another source of systematic bias).

14. Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290.

15. Ex. 284.

16. Ex. 284 (Dr. Kousser’s model); Ex. 1653A at 27 (Dr. Lewis’s model).

2. Did plaintiffs prove that the white majority has voted sufficiently as a bloc to enable it usually to defeat Latino voters’ preferred candidates?

☐ Yes ☒ No

To answer this question, the Court must determine whether the candidates identified in the exercise above as Latino-preferred lost and, if so, whether they lost because of white bloc voting. Unless white bloc voting has “usually” caused the defeat of Latino-preferred candidates, which means at least that such candidates lost more often than not, any “racially polarized voting” is not legally significant. In other words, mere differences in voting between whites and Latinos are not a sufficient basis for liability; those differences must “usually” cause the defeat of Latinos’ preferred candidates.

	# of Latino-preferred candidate(s)	# of Latino-preferred candidates who lost	# of Latino-preferred candidates who arguably lost because of white bloc voting
1994	3 (Vazquez, Finkel, O’Connor)	2 (Vazquez, Finkel)	0
1996	3 (Feinstein, Olsen, Genser)	1 (Olsen)	0
2002	2 (Aranda, McKeown)	1 (Aranda)	1 (Aranda)

2004	1 (Loya)	1 (Loya)	1 (Loya)
2008	1 (Genser)	0	0
2012	4 (Vazquez, O'Day, Winterer, G. Davis)	0	0
2016	2 (de la Torre, Vazquez)	1 (de la Torre)	1 (de la Torre)
Total	16	6	3

(IF LATINO-PREFERRED CANDIDATES DID NOT “USUALLY” LOSE BECAUSE OF WHITE BLOC VOTING, THEN QUESTION I-A ABOVE SHOULD BE ANSWERED NO, JUDGMENT ON PLAINTIFFS’ CVRA CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA, AND THE COURT SHOULD PROCEED TO QUESTION II.)

Statement of Law

(Has white bloc voting usually caused the defeat of Latino-preferred candidates?)

“In establishing [the third *Gingles* precondition], the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives.” (*Gingles*, 478 U.S. at 51.) In other words, the third *Gingles* factor is satisfied where the differences in voting patterns between the majority and minority groups result in the defeat of minority-preferred candidates. (See, e.g., *Nipper v. Smith* (11th Cir. 1994) 39 F.3d 1494, 1533 [“to be actionable, the electoral defeat at issue must come at the hands of a cohesive white majority”]; *Uno v. City of Holyoke* (1st Cir. 1995) 72 F.3d 973, 980 [“The third *Gingles* precondition—which embodies a showing that the majority votes sufficiently as a bloc to enable it, in the ordinary course, to trounce minority-preferred candidates most of the time [citation]—addresses whether the challenged practice, procedure, or structure is the cause of the minority group's inability to mobilize its potential voting power and elect its preferred candidates.”]; *Salas v. Sw. Tex. Jr. Coll. Dist.* (5th Cir. 1992) 964 F.2d 1542, 1554–1555 [“the third *Gingles* precondition requires an inquiry into the causal relationship between the challenged practice and the lack of electoral success by the protected class voters. First, is voting polarized along racial lines? Second, given that the protected class voters are the registered voter majority in the district, is their inability to elect their preferred representatives caused primarily by racial bloc voting or, instead, by other circumstances which the [Voting Rights] Act does not redress?”].)

1 In determining whether the third *Gingles* precondition is satisfied, courts have required plain-
2 tiffs to show a regular pattern of minority electoral defeat—and more than a showing that minority-
3 preferred candidates have lost a mere preponderance of elections on account of racially polarized vot-
4 ing. (See, e.g., *Lewis v. Alamance Cty., N.C.* (4th Cir. 1996) 99 F.3d 600, 606 & fn. 4 [the *Gingles*
5 Court, in using the terms “usually,” “normally,” and “generally,” “mean[t] something more than just
6 51%”]; see also *Clarke v. City of Cincinnati* (6th Cir. 1994) 40 F.3d 807, 812–813 [47% success rate
7 for black-preferred candidates inadequate to demonstrate that those candidates were “usually” de-
8 feated].) Under any colorable definition of “usually,” plaintiffs must show, at a minimum, that a white
9 bloc defeats a Latino-preferred candidate “more often than not.” (See *Williams v. State Bd. of Elec.*
10 (N.D.Ill. 1989) 718 F. Supp. 1324, 1328 & fn. 5 [relying on dictionary definition of “usually”].)

11 Any lesser showing—for example, a showing not that minority-preferred candidates usually
12 lose because of white bloc voting, but that minorities and whites typically vote in different ways—
13 would be inadequate under both the CVRA and the federal law it incorporates. Section 14027 requires
14 proof of “impair[ment]” or “dilution,” and Section 14028 emphasizes the extent to which minority-
15 preferred candidates “have been elected.” Courts also have rejected a conception of RPV that “focuses
16 exclusively on the relative percentage of Latino and white voters who chose the Latino candidate,” but
17 “fails to address whether the percentage of white . . . voters who voted against that candidate was
18 sufficient to defeat him or her.” (*Cano v. Davis* (C.D.Cal. 2002) 211 F.Supp.2d 1208, 1238 & fn. 34
19 (three-judge panel).).

20 Failure to prove legally significant RPV necessarily dooms a statutory vote-dilution claim.
21 (E.g., *Pope v. Cty. of Albany* (2d Cir. 2012) 687 F.3d 565, 582 [denying preliminary injunction because
22 plaintiffs’ election analysis was incomplete and failed to take into account success of black candidates];
23 *Kingman Park Civic Ass’n v. Williams* (D.C. Cir. 2003) 348 F.3d 1033, 1043 [granting summary judg-
24 ment for failure of proof as to second and third *Gingles* preconditions]; *Clay*, 90 F.3d at 1361 [affirming
25 dismissal of § 2 claim because plaintiffs failed to “identify the minority preferred candidates and show
26 that, due to majority bloc voting, they usually are not elected,” instead wrongly assuming that the mi-
27 nority-preferred candidates must themselves be minorities]; *Rollins v. Fort Bend Ind. Sch. Dist.* (5th
28 Cir. 1996) 89 F.3d 1205, 1218, 1223–24 [affirming judgment in favor of defendant in part because of

1 lack of proof that white bloc voting caused electoral defeat]; *Houston v. Haley* (5th Cir. 1988) 859 F.2d
2 341, 346 [“Although the district court found that only one black individual has run for alderman in
3 Oxford and that no black has been elected to the office, no evidence indicates that either result was
4 produced by racial polarization.”]; see also *Gingles*, 478 U.S. at 48, fn. 15 [“if difficulty in electing and
5 white bloc voting are not proved, minority voters have not established that the multimember structure
6 interferes with their ability to elect their preferred candidates”].)

7 **Evidence Admitted**

8 **(to support City’s position that white bloc voting has not usually**
9 **caused the defeat of Latino-preferred candidates)**

10 **17.** E.g., Tr. 752:13-28, 755:26–756:2, 1329:1–1330:19.

11 **18.** Ex. 272; Tr. 752:13-28, 756:6-12.

12 **19.** Tr. 825:2-6, 826:19-25.

13 **20.** Ex. 272 (point estimate of white support for Vazquez third-highest, at 34.9%); Tr. 1337:10-25,
14 2308:11-16 (if only Latinos had voted, Vazquez, Finkel, and O’Connor would have won); Tr. 1339:24–
15 1340:25, 2309:17-26, 2312:2-13, 3053:23–3054:19 (no statistically significant difference in white vote
16 for Holbrook, Ebner, Vazquez, and Finkel); Tr. 3053:9-22 (no statistically significant difference in
17 Latino vote for O’Connor, Vazquez, and Finkel).

18 **21.** Ex. 272.

19 **22.** Each election is briefly illustrated below using the following exhibits (Dr. Kousser’s weighted-
20 ER analyses of the 1994, 1996, 2002, 2004, 2008, 2012, and 2016 elections): Ex. 272; Ex. 275; Ex.
21 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290.

1994 (Ex. 272)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Bob Holbrook	-108.9 (38.6)	371.7 (70.7)	37.7 (20.6)	34.4 (2.6)	36.5
Pam O'Connor	113.2 (27.3)	-177.9 (50.0)	5.6 (14.5)	40.1 (1.8)	36.3
Ruth Ebner	-103.5 (32.7)	323.5 (60.0)	44.5 (17.4)	34.4 (2.2)	35.7
Tony Vazquez	145.5 (28.0)	-209.4 (51.2)	19.2 (14.9)	34.9 (1.9)	33.2
Bruria Finkel	122.4 (28.4)	-234.8 (52.0)	5.1 (15.1)	37.6 (1.9)	33.0
Matthew P. Kann	-81.3 (30.8)	260.1 (56.4)	25.5 (16.4)	23.1 (2.1)	24.4
Bob Knonovet	-6.4 (7.5)	50.8 (13.8)	5.4 (4.0)	8.7 (0.5)	8.9
Ron Taylor	51.3 (6.1)	-35.7 (11.2)	9.9 (3.2)	4.8 (0.4)	6.3
John Stevens	37.4 (5.6)	9.8 (10.3)	3.1 (3.0)	3.6 (0.4)	5.6
Wallace Peoples	8.5 (6.7)	42.0 (12.3)	12.0 (3.6)	3.5 (0.5)	5.3
Joe Sole	11.8 (3.9)	-2.7 (7.2)	1.2 (2.1)	2.9 (0.3)	3.2

Vazquez and Finkel, two Latino-preferred candidates, were defeated not by white bloc voting, but by a lack of black and Asian support. Had only whites and Latinos voted, Finkel and Vazquez would have won, as they are estimated to have received the largest shares of Latino votes (122.4% and 145.5%, respectively) and the second- and third-largest shares of white votes (37.6% and 34.9%, respectively) in a three-seat election. Additionally, Latino support for Vazquez is not statistically significantly different from that for O'Connor and Finkel, and white support for Vazquez is not statistically significantly different from that for Holbrook, O'Connor, Ebner, and Finkel. (In other words, the 95%-confidence intervals overlap. Those intervals are calculated by multiplying the standard errors, denoted in parentheses above, by 1.96. The result is added to or subtracted from the point estimate. Thus, for example, Vazquez is estimated to have won somewhere between 31.2% and 38.6% of white votes.)

1996 (Ex. 275)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Michael Feinstein	149.1 (25.0)	-259.7 (57.1)	-3.6 (18.9)	41.5 (2.2)	36.4
Asha S. Greenberg	-114.1 (30.5)	312.4 (69.5)	78.2 (23.0)	34.7 (2.7)	36.2
Ken Genser	96.5 (20.3)	-147.0 (46.3)	1.2 (15.3)	37.9 (1.8)	33.9
Paul Rosenstein	48.1 (12.0)	33.4 (27.3)	26.3 (9.0)	31.7 (1.1)	32.6
Kelly Olsen	106.4 (20.6)	-121.1 (47.0)	-7.5 (15.6)	32.7 (1.8)	30.6
Frank D. Schwengel	-91.9 (28.8)	282.7 (65.6)	57.8 (21.7)	28.3 (2.5)	30.3
Shari L. Davis	-63.2 (24.3)	175.8 (55.4)	42.1 (18.3)	26.1 (2.1)	26.0
Donna Dailey Alvarez	22.2 (12.9)	160.3 (29.4)	34.5 (9.7)	15.8 (1.1)	22.0
Richard Bloom	51.9 (12.9)	28.5 (29.4)	-3.6 (9.7)	10.0 (1.1)	12.9
Susan L. Mearns	32.6 (6.9)	-38.3 (15.7)	-0.8 (5.2)	10.8 (0.6)	10.0
Jeffrey Hughes	14.7 (4.7)	-18.8 (10.8)	-0.7 (3.6)	7.7 (0.4)	6.9
Jonathan Metzger	0.6 (3.8)	19.2 (8.6)	6.4 (2.8)	4.9 (0.3)	5.2
Larry Swieboda	-1.1 (3.0)	2.0 (6.9)	4.4 (2.3)	3.2 (0.3)	2.9

Voting was not racially polarized in this election. Accordingly, no Latino-preferred candidate could have been defeated by white bloc voting. (Note also that the Latino-surnamed candidate, Alvarez, was not Latino-preferred, as she would not have won had only Latinos voted.)

2002 (Ex. 278)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Pam O'Connor	58.6 (22.8)	-27.0 (51.2)	25.1 (31.2)	46.2 (2.4)	43.4
Kevin McKeown	76.8 (23.0)	-21.9 (51.7)	12.9 (31.5)	44.3 (2.4)	42.8
Bob Holbrook	-31.2 (29.1)	179.7 (65.4)	49.0 (39.9)	34.6 (3.0)	36.2
Abby Arnold	45.8 (17.9)	-45.1 (40.2)	16.3 (24.5)	38.9 (1.9)	35.2
Matteo Dinolfo	-9.2 (23.1)	100.4 (51.9)	22.5 (31.7)	26.9 (2.4)	27.1
Josefina S. Aranda	82.6 (12.6)	24.4 (28.2)	10.6 (17.2)	16.5 (1.3)	21.3
Chuck Allord	-5.6 (10.1)	22.9 (22.8)	8.3 (13.9)	10.9 (1.1)	10.1
Jerry Rubin	6.0 (7.8)	-20.4 (17.6)	16.9 (10.7)	8.9 (0.8)	7.8
Pro Se	16.5 (5.9)	-12.5 (13.3)	15.7 (8.1)	4.9 (0.6)	5.4

In this election, Aranda was arguably defeated by white bloc voting. There is, as Dr. Kousser observed, a statistically significant difference between Latino and white support for Aranda. And unlike in the case of Vazquez in 1994, Aranda lost because she did not receive adequate support from white voters.

2004 (Ex. 281)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Bobby Shriver	23.6 (20.3)	45.3 (60.0)	-3.6 (26.9)	51.5 (3.3)	16.5*
Richard Bloom	54.9 (13.8)	-19.4 (40.8)	23.7 (18.3)	35.2 (2.3)	11.8*
Herb Katz	5.1 (22.5)	121.7 (66.5)	-5.8 (29.9)	27.8 (3.7)	10.3*
Ken Genser	39.4 (13.6)	-9.4 (40.2)	21.8 (18.1)	28.2 (2.2)	9.4*
Patricia Hoffman	40.0 (13.1)	-31.7 (38.7)	24.9 (17.4)	27.3 (2.1)	8.9
Matt Dinolfo	-1.4 (23.9)	66.6 (70.6)	-7.7 (31.7)	25.1 (3.9)	8.3
Maria Loya	106.0 (12.3)	-74.0 (36.5)	19.2 (16.4)	21.2 (2.0)	8.1
Kathryn J. Morea	4.1 (16.6)	15.9 (49.1)	6.0 (22.1)	21.8 (2.7)	6.9
Michael Feinstein	28.2 (9.6)	2.4 (28.3)	12.1 (12.7)	16.0 (1.6)	5.6
David Cole	1.3 (3.8)	60.2 (11.3)	7.2 (5.1)	6.2 (0.6)	3.0
Leticia M. Anderson	15.6 (4.1)	11.7 (12.0)	11.2 (5.4)	5.5 (0.7)	2.4
Bill Bauer	3.2 (4.3)	38.9 (12.6)	7.7 (5.6)	5.2 (0.7)	2.4
L. Mendelsohn	0.9 (3.2)	38.1 (9.4)	12.8 (4.2)	5.0 (0.5)	2.3
Tom Viscount	11.6 (4.5)	-0.3 (13.4)	5.3 (6.0)	5.4 (0.7)	2.0
Jonathan Mann	3.7 (2.5)	13.7 (7.4)	4.2 (3.3)	3.0 (0.4)	1.3
Linda Armstrong	4.6 (1.8)	13.1 (5.3)	4.8 (2.4)	1.1 (0.3)	0.7

As with Aranda in 2002, Loya was arguably defeated by white bloc voting in 2004. There is, as Dr. Kousser observed, a statistically significant difference between Latino and white support for Loya. And unlike in the case of Vazquez in 1994, Loya lost because she did not receive adequate support from white voters.

2008 (Ex. 284)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Bobby Shriver	-4.5 (15.7)	38.0 (40.2)	60.5 (20.0)	52.7 (2.5)	47.7
Richard Bloom	49.7 (8.0)	12.0 (20.4)	43.5 (10.1)	40.2 (1.2)	39.7
Ken Genser	55.1 (9.5)	-6.3 (24.2)	32.5 (12.0)	38.8 (1.5)	37.6
Herb Katz	7.0 (13.1)	86.5 (33.5)	48.8 (16.7)	32.3 (2.0)	33.7
Ted Winterer	16.9 (11.1)	-8.0 (28.4)	37.8 (14.1)	25.6 (1.7)	23.6
Susan Hartley	20.7 (9.0)	58.9 (23.0)	23.8 (11.4)	16.7 (1.4)	19.5
Michael Kovac	3.2 (5.3)	16.0 (13.6)	23.6 (6.8)	12.6 (0.8)	12.4
Jerry Rubin	20.9 (6.6)	-3.4 (16.8)	19.5 (8.4)	11.6 (1.0)	11.9
Linda M. Piera-Avila	33.3 (5.2)	27.3 (13.4)	6.4 (6.7)	5.7 (0.8)	9.1
Herbert Silverstein	0.4 (5.1)	4.6 (13.0)	4.3 (6.5)	7.7 (0.8)	6.8
John Blakely	5.2 (3.8)	11.1 (9.6)	10.6 (4.8)	4.9 (0.6)	5.5
Jon Louis Mann	9.3 (3.2)	16.4 (8.2)	6.4 (4.1)	3.4 (0.5)	4.7
Linda Armstrong	14.0 (2.4)	19.1 (6.2)	4.4 (3.1)	2.9 (0.4)	4.7

At least according to these estimates from Dr. Kousser, there is only one Latino-preferred candidate in this election—Genser, who is the only candidate estimated to have finished with more than 50% of the Latino vote. And Genser won. (The only Latino-surnamed candidate, Piera-Avila, was not preferred by Latino voters, as only 33.3% of Latino voters voted for her.)

2012 (Ex. 287)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Ted Winterer	56.7 (14.9)	-16.0 (53.3)	-4.7 (18.2)	40.9 (3.3)	36.9
Terry O'Day	63.9 (8.0)	-32.8 (28.8)	36.0 (9.8)	37.3 (1.8)	35.7
Gleam Davis	50.2 (8.2)	-19.6 (29.3)	36.3 (10.0)	32.9 (1.8)	31.7
Tony Vazquez	92.7 (9.0)	23.9 (32.2)	7.1 (11.0)	19.1 (2.0)	24.9
Shari Davis	1.6 (12.3)	57.2 (44.1)	11.3 (15.0)	23.2 (2.7)	22.6
Richard McKinnon	5.0 (9.6)	41.4 (34.6)	4.2 (11.8)	17.1 (2.1)	16.7
John Cyrus Smith	8.7 (4.8)	78.9 (17.2)	11.6 (5.9)	10.2 (1.1)	14.0
Frank Gruber	15.1 (11.2)	55.9 (40.0)	-18.3 (13.6)	11.7 (2.4)	12.9
Jonathan Mann	19.8 (4.5)	-0.4 (16.2)	15.8 (5.5)	10.2 (1.0)	10.7
Bob Seldon	-11.0 (7.5)	96.3 (26.7)	7.0 (9.1)	5.4 (1.6)	8.9
Armen Melkonians	-0.6 (4.0)	25.8 (14.2)	18.8 (4.9)	7.4 (0.9)	8.3
Terence Later	-0.5 (5.6)	7.2 (20.2)	10.0 (6.9)	8.6 (1.2)	7.8
Jerry Rubin	9.5 (3.4)	-15.5 (12.3)	11.1 (4.2)	7.2 (0.8)	6.4
Robert Gomez	30.4 (3.3)	14.7 (11.8)	8.2 (4.0)	2.9 (0.7)	6.1
Steve Duron	5.0 (2.6)	16.8 (9.4)	5.0 (3.2)	4.4 (0.6)	5.1

All four Latino-preferred candidates (Vazquez, Winterer, O'Day, and Davis) won. It is therefore legally irrelevant that there is a statistically significant difference between Latino support and white support for both Vazquez and O'Day.

2016 (Ex. 290)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Terry O'Day	55.3 (6.2)	4.6 (22.4)	21.0 (8.2)	38.7 (1.6)	37.3
Tony Vazquez	78.3 (9.0)	-20.4 (32.5)	12.3 (11.8)	36.6 (2.3)	35.7
Ted Winterer	38.1 (10.9)	-54.4 (39.3)	5.3 (14.3)	43.3 (2.7)	35.1
Gleam Davis	43.8 (7.6)	-12.6 (27.5)	24.4 (10.0)	37.6 (1.9)	34.5
Armen Melkonians	8.8 (9.6)	80.1 (34.6)	10.0 (12.6)	22.9 (2.4)	24.4
Oscar de la Torre	88.0 (6.0)	43.2 (21.8)	20.2 (7.9)	12.9 (1.5)	21.8
James T. Watson	0.8 (5.1)	24.6 (18.4)	28.8 (6.7)	11.2 (1.3)	11.9
Mende Smith	11.5 (4.5)	12.6 (16.2)	14.4 (5.9)	9.5 (1.1)	10.1
Terence Later	1.4 (4.7)	22.9 (17.0)	6.1 (6.2)	10.1 (1.2)	9.9
Jonathan Mann	9.6 (3.1)	5.0 (11.4)	7.6 (4.1)	7.7 (0.8)	7.7

As with Aranda in 2002 and Loya in 2004, de la Torre was arguably defeated by white bloc voting in 2016. There is, as Dr. Kousser observed, a statistically significant difference between Latino and white support for de la Torre. And unlike in the case of Vazquez in 1994, de la Torre lost because he did not receive adequate support from white voters.

23. E.g., Ex. 1203 (ad); Ex. 1706 (SMRR endorsement); Tr. 2500:16–2513:19 (testimony concerning de la Torre's efforts in his prior campaigns).

24. E.g., Tr. 194:20–196:4 (Loya); Tr. 3411:6–3420:28 (O'Day).

25. E.g., Ex. 1204, Tr. 2516:1–2517:28, 2518:12-17, 2520:10-20 (de la Torre entered race late and decided not to seek any endorsements); Tr. 2522:17–2523:25 (quickly ceased fundraising efforts); Tr. 2524:26–2527:19 (although he claimed at deposition to have used a candidate-control committee, he could not account for the fact that the City has no record of any such committee); Tr. 3423:13-25, 3427:8-137 (O'Day never saw de la Torre canvassing for votes or at candidate forums, though O'Day observed de la Torre doing such things for his School Board campaigns); Tr. 4050:18–4051:14 (Jara, who had campaigned on behalf of de la Torre in School Board elections, did not believe he was interested in winning a Council seat).

- 1 **26.** Ex. 275 (Alvarez); Ex. 287 (Gomez and Duron).
- 2 **27.** Tr. 1324:4-19, 1326:7-22, 1353:19-1355:7.
- 3 **28.** Ex. 1652 at 72, Tr. 2315:3-2316:28 (ER); Ex. 1652A at 2, Tr. 2320:7-2321:10 (EI).
- 4 **29.** Ex. 1652 at 74 (187), 76 (209), 78 (227), 79 (54); Tr. 2293:17-24, 3033:10-13(187); Tr. 2296:4-
- 5 8, 3036:4-23 (209); Tr. 2300:1-22, 3043:27-3044:6 (227), 2302:14-21, 3045:27-3048:26 (54).
- 6 **30.** Ex. 1653A at 26, Tr. 2304:23-2306:17 (ER); see also Ex. 1652A at 2, Tr. 2321:1-10 (EI).
- 7 **31.** Pl. Br. at 9-10 (listing candidates); Ex. 1387 at 3 (de la Torre elected in 2002); Ex. 1389 at 3
- 8 (Leon-Vazquez, Escarce, and Quinones-Perez elected in 2004); Ex. 1390 at 4 (de la Torre elected in
- 9 2006); Ex. 1391 at 3 (Leon-Vazquez, Escarce, and Quinones-Perez elected in 2008); Ex. 1392 at 3 (de
- 10 la Torre elected in 2010); Ex. 1393 at 2 (Leon-Vazquez and Escarce elected in 2012); Ex. 1394 at 4
- 11 (de la Torre and Duron elected in 2014); Ex. 1557 at 21 (Quinones-Perez elected in 2016).

12

13 **B. Did plaintiffs prove that Latino votes have been diluted by Santa Monica’s at-**

14 **large method of election?**

15

16 ___ Yes x No

17 **(IF THE ANSWER TO QUESTION I-B, WHICH HAS BEEN DIVIDED INTO TWO SUB-**

18 **PARTS BELOW, IS NO, JUDGMENT ON PLAINTIFFS’ CVRA CLAIM SHOULD BE EN-**

19 **TERED IN FAVOR OF THE CITY OF SANTA MONICA.)**

20 **1. Have plaintiffs proven vote dilution by showing that Latinos would have a**

21 **greater opportunity to elect candidates of their choice under an alternative**

22 **electoral system?**

23 ___ Yes x No

24 **Statement of Law**

25 A public entity violates the CVRA only if its at-large method of election “impairs the ability of

26 a protected class to elect candidates of its choice or its ability to influence the outcome of an election,

27 as a result of the dilution or the abridgment of the rights of voters who are members of a protected

28 class.” (§ 14027.) Courts interpreting similar language in § 2 of the FVRA require proof of harm (vote

 dilution) and causation (a connection between the harm and the electoral system). (E.g., *Gingles*, 478

1 U.S. at 48, fn. 15 [plaintiffs must “demonstrate[] a substantial inability to elect caused by the use of a
2 multimember district”]; *Gonzalez v. Ariz.* (9th Cir. 2012) 677 F.3d 383, 405 [“proof of [a] ‘causal
3 connection between the challenged voting practice and a prohibited discriminatory result’ is crucial,”
4 and “a § 2 challenge ‘based purely on a showing of some relevant statistical disparity between minor-
5 ities and whites,’ without any evidence that the challenged voting qualification causes that disparity,
6 will be rejected”]; *Aldasoro v. Kennerson* (S.D.Cal. 1995) 922 F.Supp. 339, 369, fn. 10 [“The single,
7 underlying theme of all three *Thornburg* preconditions is *causality* in that the at-large system must be
8 responsible for minority electoral defeat—minority electoral defeat must be caused by the at-large sys-
9 tem.”].) California courts have stated, but not yet held, that the CVRA similarly demands proof of vote
10 dilution caused by an election system. (*Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223,
11 1229 [“both federal and California law create liability for vote dilution”]; *Jauregui v. City of Palmdale*
12 (2014) 226 Cal.App.4th 781, 802 [“Sections 14025 through 14032 allow citizens to challenge city-
13 wide elections and, *only if there is vote dilution*, permit a court to impose reasonable remedies to alle-
14 viate the problem.”]; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 666 [CVRA “gives a
15 cause of action to members of any racial or ethnic group that can establish that its members’ votes are
16 diluted though the combination of racially polarized voting and an at-large election system”].)

17 To prove vote dilution, a plaintiff must show that a protected class would have greater oppor-
18 tunity to elect candidates of its choice under some other electoral system, which serves as a “bench-
19 mark” for comparison. (See, e.g., *Reno v. Bossier Parish Sch. Bd.* (1997) 520 U.S. 471, 480 [“Because
20 the very concept of vote dilution implies—and, indeed, necessitates—the existence of an ‘undiluted’
21 practice against which the fact of dilution may be measured, a § 2 plaintiff must also postulate a rea-
22 sonable alternative voting practice to serve as the benchmark ‘undiluted’ voting practice.”]; *Holder v.*
23 *Hall* (1994) 512 U.S. 874, 880 (plurality opn.) [“a court must find a reasonable alternative practice as
24 a benchmark against which to measure the existing voting practice”]; *Gingles*, 478 U.S. at 50, fn. 17
25 [“Unless minority voters possess the *potential* to elect representatives in the absence of the challenged
26 structure or practice, they cannot claim to have been injured by that structure or practice.”].) “[I]n
27 order to decide whether an electoral system has made it harder for minority voters to elect the candi-
28 dates they prefer, a court must have an idea in mind of how hard it ‘should’ be for minority voters to

1 elect their preferred candidates under an acceptable system.” (*Gingles*, 478 U.S. at 88 (O’Connor, J.,
2 concurring).)

3 The “protected voting group” should have “a voting opportunity that relates favorably to the
4 group’s population in the jurisdiction for which the election is being held.” (*Smith v. Brunswick Cty.,
5 Va., Bd. of Supervisors* (4th Cir. 1993) 984 F.2d 1393, 1400.) But the key word is “opportunity”—
6 “while a plan must provide a meaningful ‘opportunity to exercise an electoral power that is commensurate
7 with its population,’ that is not the same as a guarantee of success”; to the contrary, “a necessary
8 part of equal participation is the possibility of a loss.” (*United States v. Euclid City Sch. Bd.* (N.D. Ohio
9 2009) 632 F.Supp.2d 740, 752.) “[T]he ultimate right of § 2 is equality of opportunity, not a guarantee
10 of electoral success for minority-preferred candidates of whatever race.” (*Johnson v. De Grandy*
11 (1994) 512 U.S. 997, 1014, fn. 11.)

12 Where comparison to any reasonable benchmark reveals that a protected class’s votes are not
13 being diluted—i.e., where that class already has a voting opportunity that relates favorably to its population—there is no legal requirement to jettison an at-large system; “there neither has been a wrong
14 nor can be a remedy.” (*Emison v. Growe* (1993) 507 U.S. 25, 40–41.) Any requirement to abandon an
15 at-large method of election despite a lack of vote dilution would violate the federal constitution. (See,
16 e.g., *Bartlett v. Strickland* (2009) 556 U.S. 1, 21 (plurality); *LULAC v. Perry* (2006) 548 U.S. 399, 446
17 (opn. of Kennedy, J.); U.S. Const., am. XIV.)

19
20 **Evidence Admitted (to support City’s position that there is no vote dilution in Santa Monica)**

21 **32.** Tr. 3080:21-26, 3085:28–3086:9.

22 **33.** Tr. 395:19–396:6 (Latino CVAP in Mr. Ely’s proposed “Pico” district is 30%); Tr. 1931:1-
23 1935:21 (arithmetic upper limit of Latino share of CVAP in any district, however configured, is well
24 under 50%).

25 **34.** Tr. 283:6-12 (Mr. Ely relying on CVAP figures); Ex. 162, Ex. 163, Ex. 1209 at 10, Tr. 288:15-
26 22 (Latino CVAP in Mr. Ely’s proposed district is 30%).

27 **35.** Tr. 3092:24–3093:15, 3095:3-22.

28 **36.** Ex. 1209 at 12–14 (Ely declaration explaining analysis); Ex. 164, Tr. 290:24–291:6 (1994);

Ex. 166, Tr. 292:13–293:2 (2004); Ex. 168, Tr. 294:27–295:26 (2016).

37. Ex. 1209 at 12–13; Tr. 289:14–290:23.

38. Tr. 440:4–12, 459:20–460:7; see also Tr. 1614:23–25 (Dr. Kousser admitting that how voters would vote in a districted system is uncertain).

39. Ex. 159 (map of Council candidates’ residences); Tr. 420:12–20, 460:2–7 (Mr. Ely familiar with districted systems requiring a majority of votes to win and holding runoffs where no candidate secures a majority on the first ballot); Tr. 430:18–431:10 (Mr. Ely assumed that candidates would need to reside in the district where they run); Tr. 437:27–438:2, 459:15–19 (candidates would be different in a districted election because of the residency requirement); 3100:25–28 (Mr. Levitt agreeing that the candidates who run in districted elections tend not to be the same candidates who run in at-large elections).

40. Tr. 3097:15–3098:13.

41. Tr. 3134:4–10.

42. E.g., Tr. 1936:25–1937:11, 2942:23–2943:7, 3091:17–23.

43. Ex. 1304 at 3; Tr. 451:11–23, 3397:6–13.

Ex. 1304 at 3

(Mr. Ely’s estimate of vote totals in the hypothetical Pico District in 2016)

	2016		
	Min	Max	Share
BALLOTS	3899	6123	4806
ODAY	1470	2237	1807
WATSON	442	792	582
WINTERER	1093	1699	1354
VAZQUEZ	1580	2287	1906
SMITH	392	655	503
DELATORRE	1559	2046	1763
DAVIS	1297	1986	1591
LATER	310	529	410
MELKONIANS	766	1222	951
MANN	327	510	384

44. Tr. 428:6–429:2, 460:20–463:27, 465:2–15.

45. Ex. 1399 at 22 (Alvarez received 8,693, more than half of the 12,713 votes won by the fourth-place finisher, Rosenstein); Ex. 1387 at 14 (Aranda received 6,579 votes, more than half of the 11,164 votes won by the third-place finisher, Holbrook); Ex. 1393 at 3 (Vazquez received 11,939 votes—

1 enough to win).

2 **46.** Compare Ex. 1304 (Mr. Ely’s seven election analyses), with Ex. 1399 (1996 election results),
3 Ex. 1387 (2002 election results), Ex. 1391 (2008 election results), Ex. 1393 (2012 election results);
4 Tr. 463:25–464:18 (Alvarez received fifth-most votes in hypothetical district in 1996); Tr. 465:2–
5 466:10 (Aranda received third-most votes in hypothetical district in 2002); Tr. 466:22–468:7 (Piera-
6 Avila received seventh- or eighth-most votes in hypothetical district in 2008); Tr. 468:10–471:8
7 (Vazquez received second- or third-most votes in hypothetical district, even though he was elected in
8 actual at-large election).

9 **47.** Tr. 468:10–471:8; Ex. 1304 at 2; Ex. 1393 at 3.

10 **48.** Compare Ex. 1304 (Mr. Ely’s seven election analyses), with (a) Ex. 1399 (1996 election results;
11 top three vote-getters in the district are Feinstein, Genser, and Rosenstein, who prevailed citywide);
12 (b) Ex. 1387 (2002 election results; top two vote-getters in the district are McKeown and O’Connor,
13 who both prevailed citywide); (c) Ex. 1391 (2008 election results; top four vote-getters in the district
14 are Bloom, Genser, Katz, and Shriver, who all prevailed citywide); and (d) Ex. 1393 (2012 election
15 results; top four vote-getters in the district are Davis, O’Day, Vazquez, and Winterer, who all prevailed
16 citywide).

17 **49.** Tr. 3794:23–3795:11, 3796:20–3797:15.

18 **50.** Ex. 272 (Ebner); Ex. 275 (Greenberg); Ex. 278 (Holbrook); Ex. 284 (Shriver); Ex. 287 (Davis);
19 see also Tr. 3800:14–3801:28 (Dr. Kousser left Asians and African-Americans out of his analysis).

20 **51.** Tr. 2959:8–2960:10, 2978:9-15.

21 **52.** Tr. 3116:21–3117:2.

22 **53.** Ex. 1652 at 21 (in no election are more than 9 percent of the voters Latino, and Latinos never
23 comprise as much as 45 percent of the voters in any precinct in any election); Ex. 1796, Tr. 3757:2-11
24 (falloff between Latino population and registered voting population is 60 percent); see also, e.g.,
25 Ex. 278 (top three point estimates of Latino support in 2002 range from 58.6% to 82.6%); Ex. 284 (top
26 four point estimates of Latino support in 2008 range from 20.9% to 55.1%); Ex. 287 (top four point
27 estimates of Latino support in 2012 range from 50.2% to 92.7%).

1 (IF THERE IS NO AVAILABLE ALTERNATIVE ELECTION SYSTEM UNDER WHICH LA-
2 TINO VOTERS WOULD HAVE A GREATER OPPORTUNITY TO ELECT CANDIDATES
3 OF THEIR CHOICE, THEN THERE CANNOT BE VOTE DILUTION, QUESTION I-B
4 ABOVE SHOULD BE ANSWERED NO, AND JUDGMENT ON PLAINTIFFS' CVRA CLAIM
5 SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA; IF PLAINTIFFS
6 HAVE PROVEN THAT LATINO VOTERS WOULD HAVE A GREATER OPPORTUNITY
7 TO ELECT CANDIDATES OF THEIR CHOICE UNDER AN ALTERNATIVE ELECTION
8 SYSTEM, THEN THE COURT SHOULD PROCEED TO SUBPART 2 BELOW AND DETER-
9 MINE ITS ANSWER TO QUESTION I-B BASED ON ITS ANSWER TO SUBPART 2 AND
10 ITS CONSIDERATION OF ALL THE EVIDENCE.)

11
12 2. Have plaintiffs proven vote dilution through secondary evidence?

13 _____ Yes x No

14
15 **Statement of Law (secondary evidence of vote dilution)**

16 Section 2 of the federal Voting Rights Act was amended in 1982, largely in response to a Su-
17 preme Court decision holding that Section 2 plaintiffs must show that an election system was inten-
18 tionally adopted or maintained for a discriminatory purpose. (*City of Mobile v. Bolden* (1980) 446 U.S.
19 55.) “Congress substantially revised § 2 to make clear that a violation could be proved by showing
20 discriminatory effect alone and to establish as the relevant legal standard the ‘results test’” previously
21 used by the Supreme Court and circuit courts. (*Gingles*, 478 U.S. at 35.) Accompanying the bill
22 amending section 2 was a Senate Judiciary Committee Report that “elaborate[d] on the circumstances
23 that might be probative of a § 2 violation.” (*Id.* at 36.)²

24
25 ² Those circumstances, now known as the “Senate factors,” are:

26 “1. the extent of any history of official discrimination in the state or political subdivision that touched
27 the right of the members of the minority group to register, to vote, or otherwise to participate in the
28 democratic process;

“2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

“3. the extent to which the state or political subdivision has used unusually large election districts,
majority vote requirements, anti-single shot provisions, or other voting practices or procedures that
may enhance the opportunity for discrimination against the minority group;

“4. if there is a candidate slating process, whether the members of the minority group have been denied
access to that process;

“5. the extent to which members of the minority group in the state or political subdivision bear the
effects of discrimination in such areas as education, employment and health, which hinder their ability
to participate effectively in the political process;

1 The CVRA follows the lead of federal law, providing in § 14028(e) that five non-exclusive
2 factors “are probative, but not necessary factors to establish a violation” of the statute. Those factors
3 closely track the Senate factors: “the history of discrimination, the use of electoral devices or other
4 voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of
5 access to those processes determining which groups of candidates will receive financial or other sup-
6 port in a given election, the extent to which members of a protected class bear the effects of past dis-
7 crimination in areas such as education, employment, and health, which hinder their ability to participate
8 effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.”

9 Federal courts have long made clear that the Senate factors should be considered only if a Sec-
10 tion 2 plaintiff has already satisfied the *Gingles* preconditions. The Supreme Court held as much in
11 *Gingles* itself: “While many or all of the factors listed in the Senate Report may be relevant to a claim
12 of vote dilution through submergence in multimember districts, unless there is a conjunction of the
13 following circumstances [namely, the three *Gingles* preconditions], the use of multimember districts
14 generally will not impede the ability of minority voters to elect representatives of their choice.” (478
15 U.S. at 48.) The Court further explained that “if difficulty in electing and white bloc voting are not
16 proved, minority voters have not established that the multimember structure interferes with their ability
17 to elect their preferred candidates.” (*Id.* at 48, fn. 15.) And evidence relating to the Senate factors
18 cannot bridge the evidentiary gap: “Minority voters may be able to prove that they still suffer social
19 and economic effects of past discrimination . . . , but they have not demonstrated a substantial inability

20
21 “6. whether political campaigns have been characterized by overt or subtle racial appeals;

22 “7. the extent to which members of the minority group have been elected to public office in the juris-
23 diction.

24 “Additional factors that in some cases have had probative value as part of plaintiffs' evidence to estab-
25 lish a violation are:

26 “whether there is a significant lack of responsiveness on the part of elected officials to the particularized
27 needs of the members of the minority group.

28 “whether the policy underlying the state or political subdivision's use of such voting qualification, pre-
requisite to voting, or standard, practice or procedure is tenuous.”

(S. Rep. No. 97–417 (1982) 97th Cong. 2d Sess. at pp. 28–29.)

1 to elect caused by the use of a multimember district.” (*Ibid.*)

2 Other federal courts have likewise consistently held that failure to prove any of the *Gingles*
3 preconditions is fatal to a Section 2 plaintiff’s claim. Here are but a few examples:

- 4 • *Johnson v. Hamrick* (11th Cir. 1999) 196 F.3d 1216, 1220: “If one or more of the *Gingles* factors
5 is not shown, then the defendants prevail. If all three factors are shown, then the district court must
6 review all relevant evidence under the totality of the circumstances.”
- 7 • *McNeil v. Springfield Park Dist.* (7th Cir. 1988) 851 F.2d 937, 942: “Only upon satisfaction of
8 these threshold criteria should a court conduct its totality-of-the-circumstances analysis and con-
9 sider other relevant factors. . . .”
- 10 • *Aldasoro*, 922 F.Supp. at 368: “If any one of these three preconditions is not met, there is no need
11 to consider the totality of the circumstances or the presence of the ‘Senate factors’. . . . The Senate
12 factors are now of secondary relevance and only must be considered if plaintiffs prove each of
13 *Thornburg*’s three preconditions.”
- 14 • *Clark v. Holbrook Unified Sch. Dist. No. 3 of Navajo Cty.* (D.Ariz. 1988) 703 F. Supp. 56, 59:
15 “Plaintiff must first establish these preconditions before the Court will consider the . . . factors.”

16 Courts adjudicating CVRA claims therefore ought to follow federal courts’ lead in declining to
17 reach any collateral issues of disputed fact under Section 14028(e) if plaintiffs have not proven the
18 existence of racially polarized voting under the second and third *Gingles* preconditions.

19 Finally, the CVRA, like the FVRA, is designed to remedy minority vote dilution. (See *Rey*,
20 203 Cal.App.4th at 1229 [“To protect against a voting system that impairs the minority voters’ oppor-
21 tunity to participate in the political process, both federal and California law create liability for vote
22 dilution”]; *Jauregui*, 226 Cal.App.4th at 798 [“City-wide elections where there is no vote dilution are
23 not in actual conflict with section 14027”]; *Sanchez, supra*, 145 Cal.App.4th at 686 [“liability . . . is
24 imposed because of dilution of the plaintiffs’ votes”].) Evidence that does not bear on the question
25 whether Latino votes have been diluted is irrelevant.

26 **Evidence Admitted (to support City’s position: there is no secondary evidence of vote dilution)**

27 **54.** Tr. 1935:22–1937:1.

28 **55.** Ex. 1277, Tr. 387:14-26 (Pico “similar” to other neighborhoods with respect to average in-
comes); Ex. 1278, Tr. 388:16–389:2 (percentage of renters in Pico not much different from percentage
in other neighborhoods); Ex. 1280, Tr. 389:23–390:6 (percentage of single-family homes in Pico is

“roughly equivalent” to that in other neighborhoods).

56. Tr. 3904:14-24.

57. Ex. 127 at 25, Tr. 1701:18-24, 3594:25–3595:4 (concerns, including on the part of the Charter Review Commission, about City holding elections only every four years); Tr. 3804:3-6 (confusion); see also Tr. 2886:22-24 (most cities stagger their elections).

58. E.g., Tr. 4319:21–4322:3 (running requires pulling papers, paying a \$25 fee, and securing 100 signatures, and the City provides different ways “for people to get their message out for free,” including through the City’s website and a spot on public-access TV).

59. E.g., Tr. 196:20-22 (Maria Loya spent \$34,000 on a College Board campaign); Ex. 1202, Tr. 2509:23-26 (Oscar de la Torre spent between \$14,000 and \$35,000 on each of his School Board campaigns); Tr. 2710:11-15 (Craig Foster spent \$93,000 on a School Board campaign); Tr. 2710:16-26 (Nimish Patel spent a similar amount on his own School Board campaign; Tr. 2711:2-4 (“typical” amounts spent on School Board campaigns are \$40,000 to \$50,000); Ex. 1387 at 3 (de la Torre victorious in 2002); Ex. 1389 at 3 (Maria Leon-Vazquez, Jose Escarce, and Margaret Quinones-Perez victorious in 2004); Ex. 1390 at 4 (de la Torre victorious in 2006); Ex. 1391 at 3 (Leon-Vazquez, Escarce, and Quinones-Perez victorious in 2008); Ex. 1392 at 3–4 (de la Torre and Gleam Davis victorious in 2010); Ex. 1393 at 3 (Leon-Vazquez, Escarce, Tony Vazquez, and Davis victorious in 2012); Ex. 1394 at 4 (de la Torre and Steve Duron victorious in 2014); Ex. 1557 at 3–8, 15–21 (Quinones-Perez, Vazquez, and Davis victorious in 2016).

60. Tr. 4209:6-15, 4315:12–4316:13 (Council does not operate schools); Ex. 1399 at 3 (Margaret Franco reelected in 1996); Ex. 1397 at 3 (Escarce elected in 2000); Ex. 1387 at 3 (de la Torre elected in 2002); Ex. 1389 at 3 (Escarce reelected, Leon-Vazquez elected in 2004); Ex. 1390 at 4 (de la Torre reelected in 2006); Ex. 1391 at 3 (Escarce and Leon-Vazquez reelected in 2008); Ex. 1392 at 3 (de la Torre reelected in 2010); Ex. 1393 at 3 (Leon-Vazquez and Escarce reelected in 2012); Ex. 1394 at 4 (de la Torre reelected in 2014); see also Tr. 4209:16-25 (noting people of color on School Board).

61. E.g., Tr. 1581:3-8, 3671:18-25 (no racial appeals for defeat of Prop. 3 in 1975); Tr. 3672:12-23 (*Outlook* endorsed multiple minority candidates in 1975, including Trives); Tr. 4041:11-16 (Jara recalled no racial appeals in the 2004 election cycle).

62. Tr. 4182:19–4185:1 (describing history of area), 4435:18-23 (“The reason that those items happen to be in the Pico neighborhood doesn’t have anything to do with a decision that was made about let’s try and impose a burden on one particular neighborhood. That was an industrial area where it was appropriate to do that kind of work.”).

63. Tr. 4293:10-18 (Metro directly acquired former Verizon maintenance yard, and “once they made the decision to do that private deal, there was nothing the City could do”).

64. Tr. 3598:11–3599:5.

65. Tr. 4197:26–4202:21 (City has “continually monitor[ed] the park” through expert consultants “for at least 20 years”; experts operate and maintain abatement systems and provide regular reports to the Council and regulatory authorities; City has never been out of compliance with regulations); see also Tr. 3470:28–3471:4, 3472:20-22 (“regular monitoring”); Tr. 3474:6-16 (Council’s role is to provide “policy oversight,” not to hire staff and directly oversee monitoring).

66. Tr. 234:5–235:22, 2620:13–2625:10, 3457:3-9, 3463:5-16, 3464:3-10, 4027:24–4029:18, 4274:1–4276:13, 4283:24–4284:27, 4285:24–4288:27 (Virginia Avenue Park); Tr. 228:24–229:28, 2626:21-24, 4276:14–4283:18, Ex. 1841 (Pico Library); Ex. 1661 at 2–5, Tr. 226:27–227:15, 228:21-23, 2635:18-24, 2638:21-28, 2636:8-10, 2637:12–2639:22 (Ishihara Park); Tr. 3399:15–3402:8, 4258:17–4262:25 (MANGO); Tr. 3458:2-13 (Memorial Park); Tr. 2633:11–2634:24, 4166:24–4167:15 (vocational programs at City Yards).

67. Tr. 3564:15–3565:5 (strategic planning process to maintain diversity through affordable housing, rent control, and direct subsidies); Tr. 4208:16–4209:5 (direct-subsidy program); Ex. 1922, Tr. 4218:1–4221:16 (rent control and affordable housing); see also Tr. 3563:27–3564:7, 4213:5–4217:2 (goal is to “reduce the pressure on existing housing units” with new construction that does not displace current residents).

(IF PLAINTIFFS HAVE NOT PROVEN VOTE DILUTION IN ANY WAY, THEN QUESTION I-B ABOVE SHOULD BE ANSWERED NO, AND JUDGMENT ON PLAINTIFFS’ CVRA CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA.)

1 **II. Plaintiffs' Cause of Action for Violation of the Equal Protection Clause of the California**
2 **Constitution**

3 **A. Did plaintiffs prove that Santa Monica's method of election has caused a dispar-**
4 **ate impact on minority voters in the form of vote dilution?**

5 Yes x No

6 **(IF THE ANSWER TO QUESTION II-A IS NO, JUDGMENT ON PLAINTIFFS' EQUAL**
7 **PROTECTION CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA**
8 **MONICA.)**

9 **Statement of Law (disparate impact)**

10 To prevail on their Equal Protection claim, plaintiffs must demonstrate that the City's at-large
11 electoral system has caused a disparate impact that was intended by the relevant decisionmakers. (*Rog-*
12 *ers v. Lodge* (1982) 458 U.S. 613, 617; *Johnson v. DeSoto Cty. Bd. of Comm'rs* (11th Cir. 2000) 204
13 F.3d 1335, 1343–1346; *Cano*, 211 F.Supp.2d at 1245.) In other words, constitutional vote-dilution
14 claims are proven in the same way as any other Equal Protection claims—through evidence of disparate
15 impact, causation, and discriminatory intent. (*Rogers*, 458 U.S. at 617.)³ Each is necessary but insuf-
16 ficient on its own. Disparate impact alone does not establish a constitutional violation. (*Washington*
17 *v. Davis* (1976) 426 U.S. 229, 239.) To the contrary, a plaintiff must demonstrate both that the chal-
18 lenged enactment caused the disparate impact and that the relevant decisionmakers intended such an
19 impact. (*Personnel Adm'r v. Feeney* (1979) 442 U.S. at 273–274, 279.) Nor is discriminatory intent
20 alone enough. (*Palmer v. Thompson* (1971) 403 U.S. 217, 224 [“no case in this Court has held that a
21 legislative act may violate equal protection solely because of the motivations of the men who voted for
22 it”]; *Lucas*, 967 F.2d at 551 [“To prevail on their claims of violations of the Fifteenth Amendment and
23 the Equal Protection Clause of the Fourteenth Amendment, plaintiffs had to prove first that vote dilu-
24 tion, as a special form of discriminatory effect, exists and second, that it results from a racially discrim-
25 inatory purpose chargeable to the state.”]; *Cano*, 211 F.Supp.2d at 1248 [“We do not, however, rest

26 ³ The relevant California decisional law tracks federal law. (See *Jauregui*, 226 Cal.App.4th at 800
27 [“California decisions involving voting issues quite closely follow federal Fourteenth Amendment
28 analysis.”]; *Hull v. Cason* (1981) 114 Cal.App.3d 344, 372–374 [“[t]he equal protection standards of
the Fourteenth Amendment, and of the state's Constitution, are substantially the same”]; *Sanchez v.*
State (2009) 179 Cal.App.4th 467, 487 [citing federal law for elements of Equal Protection claim]; *Kim*
v. Workers' Comp. Appeals Bd. (1999) 73 Cal.App.4th 1357, 1361 [same].)

1 our grant of summary judgment on the lack of invidious intent, for even if the plaintiffs could establish
2 such intent, they have failed to offer proof of the necessary dilutive effects. Plaintiffs in an intentional
3 vote dilution case still bear the burden of proving a dilutive effect.”.) Finally, even if plaintiffs in a
4 vote-dilution case have shown both discriminatory intent and disparate impact, they may nevertheless
5 “fail[] to establish their constitutional claims [if] the record fails to show that the inequality of oppor-
6 tunity results from the . . . current electoral system.” (*Johnson*, 204 F.3d at 1345–1346; see also *Feeney*,
7 442 U.S. at 272 [disparate impact must be traceable to discriminatory purpose]; *Martinez v. Bush*
8 (S.D.Fla. 2002) 234 F.Supp.2d 1275, 1335 [in constitutional vote-dilution cases, there is a “burden
9 placed on plaintiffs of establishing a causal link between their injury and the challenged legislation”].)

10 Disparate impact in an Equal Protection analysis is proven in the same way as vote dilution in
11 a CVRA or FVRA analysis—through evidence that a protected class would have greater electoral op-
12 portunity given the adoption of some other method of election. (*Johnson*, 204 F.3d at 1344 [“the Su-
13 preme Court, historically, has articulated the same general standard, governing the proof of injury, in
14 both section 2 and constitutional vote dilution cases”; *Lowery v. Deal* (N.D.Ga. 2012) 850 F.Supp.2d
15 1326, 1331 [“the requirements to establish that vote dilution has occurred (separate from any discrim-
16 inatory intent) are the same under” Section 2 and the Equal Protection Clause]; *Lopez v. City of Houston*
17 (S.D.Tex. May 22, 2009) 2009 WL 1456487, at *19 [“a benchmark is required for Equal Protection
18 . . . vote dilution claims”]; cf. also *Bossier*, 528 U.S. at 334 [constitutional claims of racial discrimina-
19 tion require “comparison . . . with a hypothetical alternative”]; *Meza v. Galvin* (D.Mass. 2004) 322
20 F.Supp.2d 52, 74–75 [“failure to establish a § 2 claim is generally considered *mutatis mutandis* fatal to
21 constitutional claims because the latter, unlike the former, require proof of discriminatory intent”].)
22 Because the standard for proving vote dilution even in federal cases “was intended to be more permis-
23 sive than the constitutional standard” (*Johnson*, 204 F.3d at 1344), and because the CVRA is, in turn,
24 a liberalized version of section 2 of the FVRA, a plaintiff who has failed to show vote dilution in
25 furtherance of a CVRA claim cannot, *a fortiori*, make the requisite showing of disparate impact in
26 furtherance of an Equal Protection claim. (See, e.g., *Lopez*, 2009 WL 1456487 at *18 [“plaintiffs’
27 failure to state a viable § 2 claim also forecloses their ability to obtain relief under the Equal Protection
28 Clause”]; *Broward Citizens for Fair Dists. v. Broward Cty.* (S.D.Fla. Apr. 3, 2012) 2012 WL 1110053,

1 at *9 [same].)

2
3 **Evidence Admitted (to support City’s position that there is no evidence of a disparate impact)**

4 **68.** Tr. 1936:25–1937:11, 2942:23–2943:25, 3091:17–3092:23; 3111:11-13.

5 **69.** See, e.g., Ex. 1300 at 59 (population by race or ethnicity over time); Ex. 1786A at 30,
6 Tr. 1945:27–1948:11 (population by race or ethnicity over time in Census Tract encompassing much
7 of the Pico Neighborhood).

8 **70.** Tr. 3247:2-3251:11.

9 **71.** Ex. 1816 at 477 (member and secretary of Board of Freeholders “pointed out that the oppor-
10 tunity for representation of minority groups has been increased two and a half times over the present
11 charter by expansion of the City Council from three to seven members”); *id.* at 444 (another Board
12 member contended that “seven councilmen are almost certain to assure better geographic representa-
13 tion than the three council members now elected”); see also, e.g., 3260:4–3267:16 (Dr. Lichtman ex-
14 plaining why contemporary observers were correct in their view that Charter benefited minorities).

15
16 **(IF PLAINTIFFS HAVE FAILED TO PROVE VOTE DILUTION, THEN QUESTION II-A**
17 **ABOVE SHOULD BE ANSWERED NO, AND JUDGMENT ON PLAINTIFFS’ EQUAL PRO-**
18 **TECTION CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MON-**
19 **ICA.)**

20
21 **B. Did plaintiffs prove that the relevant decisionmakers affirmatively intended to discrimi-**
22 **nate against minority voters by adopting and maintaining the current at-large election system?**

23
24 ☐ Yes ☒ No

25
26 **(IF THE ANSWER TO QUESTION II-B IS NO, JUDGMENT ON PLAINTIFFS’ EQUAL PRO-**
27 **TECTION CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MON-**
28 **ICA.)**

Statement of Law (discriminatory intent)

The Statement of Law under Section II.A is incorporated here by reference. A further discus-
sion of the requirement of proof of intentional discrimination follows.

Whereas a statutory vote-dilution claim depends only on the results of an at-large system, a
constitutional vote-dilution claim also requires proof that those results were intended by the relevant

1 decisionmakers. (See, e.g., *City of Mobile v. Bolden* (1980) 446 U.S. 55, 66–67, superseded by statute
2 on other grounds [rule that “only if there is purposeful discrimination can there be a violation of the
3 Equal Protection Clause” “applies to claims of racial discrimination affecting voting just as it does to
4 other claims or racial discrimination”]; *Osburn v. Cox* (11th Cir. 2004) 369 F.3d 1283, 1288 [“To
5 establish a Fourteenth Amendment claim, the Plaintiffs must not only plead that they lack the equal
6 opportunity to participate in the political process, but must also demonstrate that this inequality results
7 from the open primary system and that a racially discriminatory purpose underlies that system.”].) The
8 intent analysis is “a complex task requiring ‘a sensitive inquiry into such circumstantial and direct
9 evidence of intent as may be available.’” (*Bossier*, 520 U.S. at 488.) The leading case on “[d]etermin-
10 ing whether invidious discriminatory purpose was a motivating factor” behind a challenged decision is
11 *Village of Arlington Heights v. Metropolitan Housing Development Corp.* (1977) 429 U.S. 252, 266,
12 which identified five nonexhaustive factors that might support an inference that a challenged enactment
13 was motivated by discrimination: (1) “[t]he impact of the official action”—i.e., “whether it ‘bears more
14 heavily on one race than another’”; (2) “[t]he historical background of the decision . . . , particularly if
15 it reveals a series of official actions taken for invidious purposes”; (3) “[t]he specific sequence of events
16 leading up to the challenged decision”; (4) “[d]epartures from the normal procedural sequence” or
17 “[s]ubstantive departures”; and (5) “[t]he legislative or administrative history . . . , especially where
18 there are contemporary statements by members of the decisionmaking body, minutes of its meetings,
19 or reports.” (429 U.S. at 266–268.)

20 Mere awareness that an act may result in a disparate impact on minorities is insufficient to
21 prove a violation of the Equal Protection Clause. The Supreme Court rejected that theory decades ago,
22 holding that “[d]iscriminatory purpose’ . . . implies more than intent as volition or intent as awareness
23 of consequences. [Citation.] It implies that the decisionmaker . . . selected or reaffirmed a particular
24 course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an iden-
25 tifiable group.” (*Feeney*, 442 U.S. at 279; see also *Columbus Bd. of Educ. v. Penick* (1979) 443 U.S.
26 449, 464 [“disparate impact and foreseeable consequences, without more, do not establish a constitu-
27 tional violation”].) Federal and California courts have quoted and applied this holding ever since.
28 (E.g., *SECSYS, LLC v. Vigil* (10th Cir. 2012) 666 F.3d 678, 685; *Soto v. Flores* (1st Cir. 1997) 103 F.3d

1 1056, 1067; *David K. v. Lane* (7th Cir. 1988) 839 F.2d 1265, 1272; *People v. Superior Court* (1992) 8
2 Cal.App.4th at 711.)⁴ And courts have applied *Feeney*'s evidentiary requirement of purposeful dis-
3 crimination—and rejected the theory that mere awareness of consequences is enough to prove it—in
4 vote-dilution cases like this one. (E.g., *Bolden*, 446 U.S. at 71, fn. 17 [“if the District Court meant that
5 the state legislature may be presumed to have ‘intended’ that there would be no Negro Commissioners,
6 simply because that was a foreseeable consequence of at-large voting, it applied an incorrect legal
7 standard,” citing *Feeney*, 442 U.S. at 279].)

8 Neither the opinion nor the partial concurrence in *Garza v. County of Los Angeles* (9th Cir.
9 1990) 918 F.2d 763 stands for the proposition that mere awareness of consequences is enough to sup-
10 port a claim of purposeful discrimination. In *Garza*, the district court found that the L.A. County Board
11 of Supervisors, intent on maximizing the probability of their own reelection, “chose fragmentation of
12 the Hispanic voting population as the avenue by which to achieve this self-preservation.” (918 F.2d at
13 771.) “The supervisors intended to create the very discriminatory result that occurred.” (*Ibid.*) In his
14 separate opinion, Judge Kozinski noted that “there is no indication that what the district court found to
15 be intentional discrimination was based on any dislike, mistrust, hatred, or bigotry against Hispanics
16 or any other minority group.” (*Id.* at 778.) The district court had instead found evidence of a “desire
17 to assure that no supervisorial district would include too much of the burgeoning Hispanic population.”
18 (*Ibid.*) Neither opinion in *Garza* is inconsistent with *Feeney*, and neither reduces plaintiffs’ burden of
19 proof. At the least, plaintiffs must demonstrate that weakening minority voting power was the delib-
20 erately chosen “avenue” for accomplishing some other purpose, such as preserving incumbency.

21
22 **Evidence Admitted (to support City’s position: there is no evidence of intentional discrimination)**

23 **72.** Ex. 1513 at 2, 5.
24

25 ⁴ Some plaintiffs have attempted “to circumvent this unfavorable precedent by arguing that ‘this case
26 is not about “awareness” or “consciousness” of racial information,” but something else entirely, such
27 as “embracing and relying on such information”; courts have consistently rejected such efforts. (*Spur-
28 lock v. Fox* (6th Cir. 2013) 716 F.3d 383, 399; see also *Price v. Austin Ind. Sch. Dist.* (5th Cir. 1991)
945 F.2d 1307, 1319–1320 [rejecting “presumption of discriminatory intent”]; *Clark v. Huntsville City
Bd. of Educ.* (11th Cir. 1983) 717 F.2d 525, 528–529 [collecting authorities and reversing where district
court had found liability for disparate treatment that was merely “the natural consequence of defend-
ants’ failure to follow their policy”].)

- 1 **73.** Ex. 1515 at 5.
- 2 **74.** Ex. 1515 at 5, 29; Tr. 3251:8-11.
- 3 **75.** Ex. 1515 at 5.
- 4 **76.** Ex. 1515 at 29.
- 5 **77.** Tr. 1406:7-14; see also Tr. 995:7-10.
- 6 **78.** Ex. 1515 at 38; Tr. 3241:17-26.
- 7 **79.** Ex. 1322 at 1; Tr. 1506:10-24.
- 8 **80.** Ex. 1346.
- 9 **81.** Tr. 3260:4–3265:2.
- 10 **82.** Tr. 3253:20-23, 3260:4–3265:2, 3266:6-25.
- 11 **83.** Tr. 3261:9–3262:27, 3012:20-28.
- 12 **84.** Tr. 3333:14–3334:4, 3015:1–3017:11.
- 13 **85.** Tr. 3276:6-28.
- 14 **86.** Ex. 1512 at 15 (§ 1101), 25 (§ 1701); Tr. 3322:16–3330:8; see also Tr. 3330:9–3331:17 (col-
15 lective-bargaining provision in Charter also favorable to minorities).
- 16 **87.** Tr. 3281:11–3283:6.
- 17 **88.** Tr. 3279:16–3280:14.
- 18 **89.** Tr. 3904:14-24.
- 19 **90.** Tr. 3904:5-13, 3941:7–3943:19; see also Tr. 1100:6-9 (assertion about “southern California”).
- 20 **91.** Tr. 3284:6-14.
- 21 **92.** Ex. 1300 at 59 (Dr. Kousser’s presentation of population trends); Ex. 1816 at 460 (short, neu-
22 trally worded article in *Outlook* concerning population growth); Ex. 1801, Ex. 1802, Tr. 3284:16–
23 3289:21 (non-white share of population increased 1.1 percentage points, from 3.4% to 4.5%, from 1940
24 to 1946).
- 25 **93.** See Tr. 3290:4–3293:2 (no increase in Mexican-born population between 1940 and 1950, and
26 there were few native-born Latinos in Santa Monica at the time); 3271:2-6 (Dr. Lichtman, relying on
27 Ex. 1300 at 59, noting that “even as late as 1960, there are only 5,145 Latinos in the City, a very small
28 percentage, about 6 percent of the total City” population).

1 **94.** Ex. 1781 at 61 (“few Californians seemed willing to openly reject the principles of nondiscrim-
2 ination, equal opportunity, and tolerance. . . . The campaign against Proposition 11 was not premised
3 on a rejection of tolerance per se but on a proposition about what types of authority within a society
4 that had committed itself to tolerance.”); Tr. 3294:27–3297:8 (“both sides had used language and ap-
5 peal and persuasiveness of racial tolerance and racial progress, and each charged the other with racial
6 intolerance”).

7 **95.** Ex. 1781 at 61; Tr. 3297:9-28.

8 **96.** Ex. 1781 at 59 (“the outcome of another proposition on the same ballot demonstrates the chal-
9 lenge of making clear pronouncements about the electorate’s judgments about race and racism based
10 on Proposition 11 alone”); *id.* at 61 (“Many factors shaped this particular historical outcome: the exi-
11 gencies of war and peace, the rising tide of anti-Communism and Cold War politics, the decline of left-
12 oriented unionism, and the actions of a diverse set of political forces”).

13 **97.** Tr. 3298:16–3299:14; Ex. 1300 (Prop. 15 does not appear in Dr. Kousser’s declaration).

14 **98.** Tr. 1009:18–1010:16, 1105:15–1106:15.

15 **99.** Tr. 3319:7–3320:6.

16 **100.** Tr. 3312:19–3316:25.

17 **101.** E.g., Ex. 1816 at 442, 447, 477; Tr. 3316:27–3318:17.

18 **102.** E.g., Ex. 1816 at 492 (City worker protections); Ex. 1816 at 486 (tax rate under council-man-
19 ager form of government lower); Tr. 1528:14-18 (Kousser admitting that a “reduction in taxes can be
20 a significant motivation” in voting decisions); Ex. 1816 at 456 (City Attorney); Ex. 1816 at 491 (City
21 Manager); see also Tr. 1557:27-28 (plaintiffs’ counsel arguing that the Charter was “multiple, multiple
22 pages of many things. It is not just at-large versus district voting”).

23 **103.** Tr. 3269:10-17, 3276:26-28.

24 **104.** Tr. 3269:18–3276:28.

25 **105.** Tr. 3362:7-24.

26 **106.** Ex. 1816 at 499, 524 (pro-Charter ads supported by, among others, Rev. Welford Carter, Mrs.
27 Welford Carter, Rev. Alfonso Sanchez, Sr., Mrs. Marcus Tucker, Rabbi Maurice Kleinberg, Ysidro
28 Reyes, Martin Barnes, and Vivian Wilken); Ex. 1206 at 193 (listing members of Interracial Progress

Committee who lent their names to pro-Charter ad); Ex. 1206 at 193, 259 (Rev. Welford Carter, pastor of Calvary Baptist Church, member of the Committee for Interracial Progress, and the most influential African-American leader in the City through the Civil Rights movement); Ex. 1816 at 498, Tr. 3365:18-25 (Mrs. Carter was “an activist in Santa Monica in her own right,” and “in 1971 she became the first African-American to serve on the School Board in Santa Monica”); Ex. 1206 at 195, 242 (Vivian L. Wilken, founding member of the Santa Monica branch of the County Supervisors Interracial Progress Committee, and a member of the NAACP); Ex. 1816 at 513 (Frank Barnes was “a fearless civil rights advocate for over 60 years, serving as President of the Southern Area Conference of the NAACP for 10 years” and “co-founded the Fair Housing Council of California”); Ex. 1206 at 241, Tr. 1443:18–1445:6, 1445:14-18 (Martin Goodfriend, founder and president of the Jewish Community Center, President and founder of the Jewish Community Council, and President of the B’Nai B’rith Lodge); Ex. 1816 at 15, Tr. 1447:12-26 (Leo B. Marx, former President and board member of Beth Shalom Temple and President of the Jewish Family Service); Ex. 1817 at 1867, 2085 (Marcus Tucker was first African-American physician to live and work in Santa Monica, and Marcus Tucker, Jr., became a Los Angeles Superior Court judge); Ex. 1817 at 2087 (citing Ysidro Reyes’s many “civic, professional, fraternal, religious, and political memberships”); Ex. 1206 at 193 (listing members of Interracial Progress Committee); Tr. 3372:25–3373:19 (“It is inconceivable these members of the Interracial Progress Committee, including the preeminent African-American civil rights leader, including a number of other African Americans and Latinos, would put their name on an ad supporting a charter that allegedly had the effect and intent of discriminating against minorities.”); Tr. 3373:20–3374:2 (no evidence Committee members were hostile to the Charter).

107. Closing Br. at 1–2; Tr. 1006:10-17.

108. Tr. 1507:22–1508:9 (“quite close to a smoking gun”); Ex. 28, Ex. 1911, Tr. 3351:18–3352:18 (decrying the “sectionalism” that districts would engender and making no racial appeals); Ex. 29, Tr. 3357:1–3362:5 (similarly condemning the “trading and logrolling” that a districted system would require).

109. Ex. 1315 at 17.

110. Ex. 1816 at 442–444, 477 (articles relaying statements of Freeholders); Tr. 1458:24-28 (Dr.

Kousser noting that his “interpretation is based solely on that document,” Ex. 1816 at 477); Ex. 1910, Tr. 3337:5–3338:17 (Dr. Kousser was simply “rewriting . . . what Mrs. Cornett is saying”).

111. Ex. 1816 at 443–444, 477; Ex. 1323 (“Barnard told the voters that every authority on City government consulted by the Freeholders had urged the Charter framers not to handicap the council manager form of government by giving Santa Monica seven little ward mayors, each competing against the other.”); Tr. 3342:2–4 (Cornett later “denounced the move to districts and said it is a move to disenfranchise the elector by limiting his vote to one council member”).

112. Closing Br. at 2, citing Exs. 31, 266.

113. Ex. 1816 at 454 (“Our present government can’t be too bad!”); *id.* at 479 (arguing that “Santa Monica has one of the most economical governments in the country. Why change to the unknown?”); *id.* at 459 (likening Charter supporters to communists); Tr. 3635:2–16 (Anti-Charter Committee ad does not refer to or advocate for districts); Tr. 3643:16–26, 3647:27–3650:23 (had Anti-Charter Committee succeeded, City would have maintained status quo, not switched to districts).

114. Ex. 1816 at 470; Tr. 3652:16–3653:23.

115. Tr. 1539:6–13 (Charter proponents affixed their names to ads); Ex. 1816 at 454, 459, 479, 480, Tr. 3654:22–3655:22 (Charter opponents did not affix their names to ads, and the few who identified themselves otherwise were not members of the Interracial Progress Committee).

116. Tr. 3721:27–3723:19 (noting other changes Prop. 3 would have made if passed); Ex. 1368 at 9 (election results).

117. Ex. 1315 at 21.

118. Ex. 1315 at 21–22.

119. Tr. 1580:9–13, 1580:27–1581:2, 1581:9–12, 1582:6–10, 1586:28–1587:4, 1588:2–6.

120. Tr. 1109:20–1110:27, 1588:15–21.

121. Tr. 1110:1–18 (Dr. Kousser testified that he was “reminded of the degree of racial antipathy during the 1970s,” when he was “busy with other things,” like raising children, writing a book, and securing tenure; see also Tr. 1591:27–1592:16 (he does not mention Santa Monica in his 120-page paper on *Crawford*, and the school district that was at issue in that case, L.A. Unified, is distinct from Santa Monica’s school district).

1 **122.** Ex. 292 (Dr. Kousser’s statistical analysis); Tr. 1114:11-17, 1604:19-27, 1605:15-21, 3680:18–
2 3681:1, 3715:25-28 (Dr. Kousser incorrectly assumed that votes for Beteta and Juarez were a proxy for
3 votes cast by Latinos); Ex. 1808, Tr. 3701:22–3702:21 (little overlap between votes for Beteta and
4 votes for Juarez); Ex. 1811 (stronger correlation between votes for two white candidates than between
5 votes for Beteta and Juarez); Ex. 1811, 3712:20-28 (weaker correlation between voting for Juarez and
6 Beteta and voting for Prop. 3 than between voting for two white candidates and voting for Prop. 3);
7 Tr. 3690:15–3692:24 (regression model generates questionable numbers); Tr. 1601:8–1602:8,
8 3720:19-27 (Prop. 3 was about far more than districts); Ex. 1315 at 21, Tr. 1114:18-22, Ex. 1206 at
9 288, Tr. 3255:21–3257:10 (no minorities favored districts); Tr. 3725:5–3726:18 (no evidence that a
10 district would have given Latinos ability to elect candidates of choice); Ex. 1368 at 1 (two minority
11 candidates, Trives and Beteta, won their elections).

12 **123.** Tr. 3253:12-16, 3817:25–3818:10.

13 **124.** Tr. 1318:23-28, 3818:11–3819:3.

14 **125.** Tr. 1319:11-25, 3012:23–3014:4.

15 **126.** Tr. 3834:23–3835:5.

16 **127.** Ex. 1315 at 1, 17.

17 **128.** Ex. 127 at 23–24.

18 **129.** Ex. 127 at 24; Tr. 1689:12-17, 1691:20-25, 3802:11-20.

19 **130.** Ex. 127 at 27–28, 64.

20 **131.** Tr. 3257:16-24.

21 **132.** Tr. 968:2-4 (Councilmember Abdo: “I am a strong proponent for finding ways to increase mi-
22 nority representation on the council”); Tr. 986:2-12 (Dr. Kousser noting that councilmembers stated
23 that “they wanted more minorities on the council”); Tr. 1623:5–1625:18 (Dr. Kousser agreeing that
24 councilmembers did not make any explicitly discriminatory statements); see also Tr. 3394:21-25
25 (plaintiffs’ counsel arguing that “We have never said that this is anything about racism. We’re talking
26 – in fact, we’ve said the opposite, with the analogy to the Edelman situation in Gloria Molina. We’ve
27 said the opposite.”); see also Pl. Br. at 18–19 (not arguing theory of racial animus).

28 **133.** Tr. 1630:13-16 (Q: “You contend that Mr. Zane had a discriminatory motive based on his desire

to protect his city council seat; right?” Dr. Kousser: “Yes.”); see also Tr. 684:14–686:22 (describing *Garza* case); Tr. 962:20–964:11 (trying to draw parallels between this case and *Garza*); Tr. 1741:4-14, 3394:19-25 (plaintiffs’ counsel arguing that this case was similar to *Garza*).

134. Tr. 1630:10-18 (Dr. Kousser agreeing that “Mr. Zane had a discriminatory motive based on his desire to protect his city council seat”); Tr. 1630:27–1631:25 (Zane stating at Council hearing that he was not running for reelection; Katz and Olsen likewise did not run for reelection); Tr. 3842:7–3843:4 (explaining implied comparison between Edelman in *Garza* and Zane in this case is inapt because Zane never ran for reelection).

135. Tr. 953:22–958:21.

136. Ex. 1922, Tr. 4220:21–4221:16, 4249:13-17, 4250:19-28 (publicly assisted housing projects scattered throughout City, not just in Pico Neighborhood); Tr. 1067:5-16 (Duron, a sitting member of the Rent Control Board, disagreeing with notion that most affordable housing is in the Pico Neighborhood); Tr. 3434:22-27, 4220:21–4221:16, 4246:20–4247:4 (O’Day and Davis, sitting councilmembers, making same point); Tr. 4064:20-24 (“Community Corporation has established different housing units all around the City of Santa Monica”); 4245:14–4246:3 (under the City’s inclusionary housing rule, a portion of all newly developed housing must be set aside for deed-restricted affordable housing); Tr. 4246:14-19 (rent-controlled units scattered throughout the City, not just in Pico Neighborhood).

137. Tr. 992:26–994:2.

138. Ex. 127 at 48; Tr. 3846:1–3847:8.

139. Tr. 939:14-26 (Holbrook favored districts); Tr. 1678:16–1679:24 (Holbrook claimed he would win under a districted system, too); Ex. 272, Tr. 3849:13–3850:19 (point estimate of Latino support for district advocate Holbrook in 1994: -108.9%); Ex. 275, Tr. 3851:28–3852:2 (point estimate of Latino support for district opponent Olsen in 1996: 106.4%).

140. E.g., Tr. 187:21-25, 1667:9-13 (Maria Loya); Ex. 1694, Tr. 191:8-28, 1667:14-28 (Jose Escarce, Maria Leon-Vazquez, Ana Jara, and Douglas Willis); Ex. 1697 at 4, Tr. 1659:18–1660:4 (Tony Vazquez); Ex. 1679 at 6, Tr. 1661:16-19 (Margaret Quinones-Perez); Ex. 1682, Ex. 1711, Tr. 2495:23-28 (Barry Snell, Oscar de la Torre); Tr. 1048:15-18 (Duron); see also Tr. 4039:14-26 (Jara encouraged to run for School Board by Patricia Hoffman, co-chair of SMRR).

1 **141.** E.g., Tr. 189:8-15 (Loya); Ex. 1817 at 1588, Tr. 1685:11-15 (Willis).

2 **142.** Tr. 1660:3-9 (Vazquez); Ex. 1678, Ex. 1679 at 2, Ex. 1686 at 1, Tr. 1661:7-14, 1665:9-13,

3 1665:27–1667:8 (Ken Genser); 1661:26–1662:7 (Willis); Ex. 1682 at 2, 1670:11-20 (de la Torre);

4 Ex. 1679 at 3, 1662:8-26 (repudiating Herb Katz, who opposed districts).

5 **143.** Ex. 1686 at 2 (Greenstein co-chair of SMRR); Tr. 1665:21–1666:10 (Greenstein also chair of

6 Charter Review Commission, which recommended moving away from at-large system).

7 **144.** Tr. 1681:12-20 (Dr. Kousser did no analysis to show that districts would have increased Latino

8 voting strength in 1992); Tr. 3752:4-11 (Dr. Lichtman stating that no district could have done so).

9 **145.** Tr. 3752:12-19, 3794:23–3795:8, 3796:20–3797:15, 3801:2-25 (districts would have had ad-

10 verse effect on African-Americans and Asians); Tr. 3800:17-23 (Dr. Kousser did not analyze the impact

11 of districts on African-Americans or Asians in Santa Monica); Tr. 3752:20-26 (Vazquez, a Latino, was

12 already sitting on the City Council in 1992); Tr. 3752:27-3753:4 (Asha Greenberg, an Asian-American,

13 was also elected to the City Council in 1992); Tr. 3783:6-18, 3803:16–3804:12 (Latino registered-voter

14 population was too small for a district or alternative at-large system to have been effective);

15 Tr. 3790:17–3794:8 (Latinos would not have been able to win in any district, and Latinos outside the

16 district would have been submerged in overwhelmingly non-Latino districts).

17 **146.** Tr. 3817:25–3818:22 (election timing); Ex. 1816 at 86–87, Tr. 3819:22–3821:25 (ban on dis-

18 crimination in clubs); Ex. 1816 at 96, 3821:27–3822:11, 3433:19-25, 4220:3-7, 4245:14-21 (afforda-

19 ble-housing requirements).

20 **147.** Tr. 32823:3–3824:10 (describing Prop. J in 1988); Ex. 1381 at 4 (Vazquez elected); see also

21 Tr. 1716:9–1717:5, 3802:1-10 (Greenberg, an Asian-American, elected in 1992).

22 **148.** Tr. 991:6-26; see also 3834:23–3835:5 (Dr. Lichtman identified no departures either).

23 **149.** Ex. 127 at 45–46 (too few to prevail, less influence; lack of African-American and Latino co-

24hesion); *id.* at 25 (insufficiently concentrated); *id.* at 25, 45–47, Tr. 1699:6-23, 3832:16–3833:10 (loss

25 of influence over most councilmembers, parochialism); Ex. 127 at 25, Tr. 1701:18-24 (elections less

26 frequent).

27 **150.** Ex. 127 at 52.

28 **151.** E.g., Closing Br. at 1, 17; Tr. 959:5-11.

1 **152.** Ex. 1387 at 5 (64.14% of voters voted against Measure HH, which called for districts).
2 **153.** Tr. 1116:4–1117:28, 1718:10-22.
3 **154.** Tr. 1719:6–1720:24, 3872:10-24.
4 **155.** Tr. 1315:24–1316:7, 1317:6–1318:22, 3015:2-24, 3016:4-13, 3017:4-11 (plaintiffs’ experts
5 conceding that the current system has none of these dilutive features).
6 **156.** Ex. 1915 (summary of key opinions on lack of discriminatory intent in 1946); Tr. 3661:4-16
7 (Dr. Kousser found no evidence of discriminatory intent in the adoption of an election system in 1914
8 that was at least arguably unfavorable to minorities, but did find such evidence when the potentially
9 discriminatory features of that system were abandoned).

10 **(IF PLAINTIFFS HAVE FAILED TO PROVE INTENTIONAL DISCRIMINATION, THEN**
11 **QUESTION II-B ABOVE SHOULD BE ANSWERED NO, AND JUDGMENT ON PLAIN-**
12 **TIFFS’ EQUAL PROTECTION CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY**
13 **OF SANTA MONICA.)**

14 **III. Remedy in the event the court finds liability**

15 **(IF THE COURT ENTERS JUDGMENT IN FAVOR OF THE PLAINTIFFS ON EITHER OF**
16 **THEIR CAUSES OF ACTION, IT SHOULD SET A DEADLINE BY WHICH SANTA MON-**
17 **ICA, WHICH IS A CHARTER CITY, MUST PROPOSE A REMEDY FOR ITS REVIEW.)**
18
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28

1 **PROOF OF SERVICE**

2 I, Cynthia Britt, declare:

3 I am employed in the County of Los Angeles, State of California. My business address is 333
4 South Grand Avenue, Los Angeles, California 90071. I am over the age of eighteen years and not a
party to the action in which this service is made.

5 On January 18, 2019, I served

6 **DEFENDANT CITY OF SANTA MONICA'S OBJECTIONS TO PLAINTIFFS' PROPOSED**
7 **STATEMENT OF DECISION**

8 on the interested parties in this action by causing the service delivery of the above document as
follows:

9 Kevin I. Shenkman, Esq.
10 Mary R. Hughes, Esq.
11 John L. Jones, Esq.
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23 ☒ **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the
24 above-mentioned date. I am "readily familiar" with the firm's practice of collection and pro-
25 cessing correspondence for mailing. It is deposited with the U.S. Postal Service on that same
26 day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of
27 business. I am aware that on motion of party served, service is presumed invalid if postal can-
28 cellation date or postage meter date is more than one day after date of deposit for mailing an
affidavit.

☒ **BY ELECTRONIC SERVICE:** I also caused the documents to be emailed to the persons at
the electronic service addresses listed above.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct.

25 Executed on January 18, 2019, in Los Angeles, California.

26 
Cynthia Britt

EXHIBIT I

FEB 13 2019

RULING/ORDERS

Sherri R. Carter, Executive Officer/Clerk
By N. M. Raya Deputy
N. M. Raya

Pico Neighborhood Association, et al. v. City of Santa Monica,
Case No.: BC616804

Defendant City of Santa Monica's Objections to Plaintiff's
proposed Judgment are OVERRULED.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.



YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

02/14/19

EXHIBIT J

FEB 13 2019

RULING/ORDERS

Sherri R. Carter, Executive Officer/Clerk
By Neli M. Haya Deputy
Neli M. Haya

Pico Neighborhood Association, et al. v. City of Santa Monica,
Case No.: BC616804.

Defendant City of Santa Monica's Objections are extensive repetitions of their closing arguments. Nonetheless, the Court rules as follows:

Defendant's Objection 1:18-20 is SUSTAINED, except as the reference to dilution only. (Section 14027 refers to dilution or abridgment: "An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.")

Defendant's Objection 11:2-8 is SUSTAINED as to "serious" and "seriousness" only.

Defendant's Objection 11:8-15 is SUSTAINED as to "barely won" only.

Defendant's Objection 19:21 & fn. 9 is SUSTAINED as to "serious" only.

Defendant's Objection 17:4-21 is SUSTAINED as to "holistic" "serious" and "seriousness" only.

Defendant's Objection 17:25-18:1 is SUSTAINED as to "seriousness" only.

Defendant's Objection 28:18-21 is SUSTAINED as to Plaintiff's omission that "some members of the Committee on Interracial Progress supported the 1946 Santa Monica charter amendment and that none signed onto advertisements opposing it" only.

Defendant's Objection 13:10-14:8 is SUSTAINED as to Cottier v. City of Martin (8th Cir.2006) 445 F.3d 1113 only.

//

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.



~~YVETTE M. PALAZUELOS~~
YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

02/14/19

EXHIBIT K

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION; and
MARIA LOYA,

Plaintiffs,

v.

CITY OF SANTA MONICA,

Defendant.

CASE NO. BC616804

**DEFENDANT CITY OF SANTA
MONICA'S NOTICE OF APPEAL**

Complaint Filed: April 12, 2016

Trial Date: August 1, 2018


*Assigned to Judge Yvette Palazuelos
Dep't 9*

1 **TO THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR**
2 **THE COUNTY OF LOS ANGELES:**

3 **PLEASE TAKE NOTICE** that pursuant to Code of Civil Procedure section 904.1, subdivi-
4 sion (a), Defendant City of Santa Monica hereby appeals to the Court of Appeal of the State of Cali-
5 fornia, Second Appellate District, from the Judgment issued following a court trial in the above-refer-
6 enced action, filed and entered on or around February 13, 2019, including, but not limited to, all rulings
7 and orders embodied in said Judgment and in the above-referenced action that were adverse to the City
8 of Santa Monica.

9 DATED: February 22, 2019

Respectfully submitted,
GIBSON, DUNN & CRUTCHER LLP

11 By: 
12 Theodore J. Boutrous, Jr.
13 Attorneys for Defendant
14 City of Santa Monica

1 **PROOF OF SERVICE**

2 I, Laura Rocha-Maez, declare:

3 I am employed in the County of Los Angeles, State of California. My business address is 333
4 South Grand Avenue, Los Angeles, California 90071. I am over the age of eighteen years and not a
party to the action in which this service is made.

5 On February 22, 2019, I served

6 **DEFENDANT CITY OF SANTA MONICA'S NOTICE OF APPEAL**

7 on the interested parties in this action by causing the service delivery of the above document as
8 follows:

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17 ☒ **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the
18 above-mentioned date. I am "readily familiar" with the firm's practice of collection and pro-
19 cessing correspondence for mailing. It is deposited with the U.S. Postal Service on that same
20 day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of
business. I am aware that on motion of party served, service is presumed invalid if postal can-
cellation date or postage meter date is more than one day after date of deposit for mailing an
affidavit.

21 ☒ **BY ELECTRONIC SERVICE:** I will also cause the documents to be emailed to the persons
22 at the electronic service addresses listed above.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

24 Executed on February 22, 2019, in Los Angeles, California.

25 
26 Laura Rocha-Maez

EXHIBIT L

Los Angeles Superior Court
Spring Street Court
312 N. Spring Street, Dept. 9
Los Angeles, CA 90012
(213) 310-7009

Fax

TO: Theodore Boutrous, Jr.
Gibson Dunn

FROM: Neli Raya, Judicial Assistant

FAX: (213) 229-6804

PAGES: 2 (including cover sheet)

PHONE:

DATE: March 6, 2019

RE: BC616804

CC: dadler@gibsondunn.com

☐ Urgent

☒ For review

☐ Please
comment

☐ Please reply

☐ Please recycle

Comments: Please distribute. Thank you.

FILED
Superior Court of California
County of Los Angeles

MAR 06 2019

RULING/ORDERS

Sherri R. Carter, Executive Officer/Clerk
By: [Signature] Deputy
Ali M. Raya

Pico Neighborhood Association, et al. v. City of Santa Monica
Case No.: BC616804

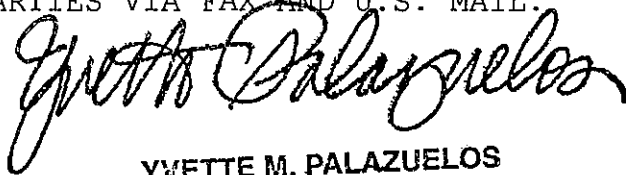
Defendant City of Santa Monica's Ex Parte Application to Confirm (filed March 1, 2019) is DENIED.

Plaintiff Pico Neighborhood Association's Motion to Strike Declaration of Jeffrey Lewis in support of Defendant's Ex Parte Application is GRANTED.

The Declaration of Jeffrey Lewis is STRICKEN.

CLERK TO GIVE NOTICE TO ALL PARTIES VIA FAX AND U.S. MAIL.

IT IS SO ORDERED.



YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

EXHIBIT M

No. B295935

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

CITY OF SANTA MONICA,

Petitioner-Defendant,

v.

PICO NEIGHBORHOOD ASSOCIATION; MARIA LOYA,

Respondents and Plaintiffs.

**PETITION FOR WRIT OF SUPERSEDEAS OR OTHER
EXTRAORDINARY RELIEF; MEMORANDUM OF POINTS
AND AUTHORITIES**

Appeal from the Superior Court for the County of Los Angeles

The Hon. Yvette M. Palazuelos, Judge Presiding

Superior Court Case No. BC616804

Department 9 Telephone: (213) 310-7009

Gov't Code, § 6103

IMMEDIATE STAY REQUESTED

***(of order prohibiting Council members from serving after
August 15, 2019, which calls for compliance starting on or
before April 1, 2019)***

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Attorneys for Petitioner-Defendant, City of Santa Monica

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

In this California Voting Rights Act case, the trial court entered a judgment mandating, in paragraph 9, that as of August 15, 2019, the City of Santa Monica must oust all of its duly elected Council members from office—leaving the City with no choice but to hold an election this summer to ensure that there is a new Council in place to run the City. The City has appealed, effectuating an automatic stay of paragraph 9 under section 916 of the Code of Civil Procedure. But the trial court has refused to confirm that a stay is now in place. And plaintiffs have taken the position that paragraph 9 is merely prohibitory, so it is *not* stayed during this appeal, and that if the City does not comply with it, “there will be consequences.” (Vol. 5, Ex. GG, p. 1121, fn.2.)

Paragraph 9 provides: “Any person, other than a person who has been duly elected to the Santa Monica City Council through a district-based election in conformity with this Judgment, is prohibited from serving on the Santa Monica City Council after August 15, 2019.” This is indistinguishable from many other injunctions that the Supreme Court and Courts of Appeal have found to be mandatory in effect—and thus automatically stayed on appeal—even if prohibitory in form, because they coerce a change to the status quo. (See, e.g., *Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, 838.) Here, the enforcement of paragraph 9 will have a dramatic, irreparable impact on the status quo and the electoral process in Santa Monica. It requires the City to strip its current Council members of their elected positions, scrap an at-large election system that has been in place for

more than seven decades, and hold an election this summer under a brand-new, court-imposed district-based system. Plaintiffs have emphasized that paragraph 9 *requires* a fundamental change to the status quo, and that if the City refuses to disband its current Council and hold an election before August 15, “the Governor will do it for them. He will order an election. *We are not talking about them not having an election.* They have time to do it. *They will do it.* They just don’t want to do it.” (Vol. 5, Ex. II, p. 1184:18-21, italics added.)

Under the circumstances, in light of the plaintiffs’ position that paragraph 9 is not presently stayed and the trial court’s refusal to clarify this issue, the City respectfully requests that this Court issue a writ of supersedeas in a corrective capacity, confirming that paragraph 9 of the trial court’s judgment is a mandatory injunction and was automatically stayed by the City’s filing of its notice of appeal.¹

Alternatively, if the Court concludes that paragraph 9 is prohibitory in effect as well as form, and therefore not automatically stayed on appeal, this Court should exercise its discretion to stay the enforcement of paragraph 9 during the appeal to avoid irreparable harm to the City, its Council members, and the public. Among other things, the enforcement of paragraph 9 could leave the City without any governing body for some period of time;

¹ The parties and the trial court agree that paragraph 8 of the judgment, which expressly calls for a district-based election to be held on July 2, 2019, is stayed automatically as a result of the City’s appeal. (See Vol. 5, Ex. II, p. 1189:14-16.)

would compel the City to adopt the very method of election and districting plan whose necessity and legality are the subjects of this appeal; would rob the current Council members of the seats they spent time and energy campaigning for and winning; would deprive voters, including Latino voters, of their preferred representatives; and would cost the City almost \$1 million in unrecoverable election-related costs.

Finally, the City requests that this Court either issue a decision on this petition before April 1 (the date when the Council would need to pass a resolution calling for an election to occur in late July) or push back the August 15, 2019, deadline in paragraph 9. Elections must be noticed approximately four months in advance, and without either temporary or permanent relief from this Court, the City would be forced to notice a district-based election in early April. (See Vol. 5, Ex. GG, p. 1135, ¶¶ 5(a)–(c).)

II. PETITION FOR WRIT OF SUPERSEDEAS OR OTHER EXTRAORDINARY RELIEF; REQUEST FOR STAY

A. Parties

1. Petitioner, the City of Santa Monica, was the defendant in the underlying action (Los Angeles Superior Court case number BC616804).

2. Respondents, who were the plaintiffs in the underlying action, are the Pico Neighborhood Association and Maria Loya.

B. Factual background

3. Santa Monica is a small, progressive, and inclusive

city. In 1946, the City adopted its current Charter, which calls for the “at-large” election of seven Council members. (See Vol. 2, Ex. E, p. 291.) Each voter may cast up to three votes in gubernatorial election years and up to four votes in presidential election years for candidates of his or her choice. Every voter thus has a say as to who sits in each seat on the Council, and Council members are accountable to every voter.

4. The City’s most prominent minority leaders backed the adoption of the current electoral system in the 1946 Charter (see Vol. 5, Ex. BB, p. 1079, ¶ 70), in large part because that system made it more likely that minorities could elect candidates of their choice. The 1946 Charter also featured other provisions that were highly favorable to minorities, including an explicit prohibition against racial discrimination in public employment. (Vol. 4, Ex. X, p. 864.) Not surprisingly, there is no record of any minority residents opposing the 1946 Charter. (*Id.*, p. 931.)

5. Santa Monica voters have twice, in 1975 and in 2002, overwhelmingly rejected proposals to drop the at-large method of election in favor of a districted electoral scheme. (See Vol. 2, Ex. E, pp. 294, 297.) And they did so for sound, “good government” reasons that had nothing to do with race. Under a districted system, each voter would be able to vote only once every four years, and for only one seat on the Council—the one assigned to the particular district in which that voter lives. A Council member under such a system would be directly accountable only to his or her district, not the City as a whole, and voters feared that such Council members would succumb to horse-trading and parochialism.

6. The at-large system has served the City well for 73 years. Council elections are hotly contested, with typically over a dozen candidates running for office, and voter participation is high. The candidates elected as a result of these competitive races represent and are accountable to every last resident in the City. And, critically, under the current at-large election system, candidates preferred by Latino voters have consistently prevailed at the polls, notwithstanding the fact that Latinos presently make up only 13.6 percent of the City’s voting population. (See Vol. 2, Ex. E, pp. 303–314.)

C. Procedural background

7. Plaintiffs filed this action on April 12, 2016 (see Vol. 1, Ex. A, pp. 9–25), and filed the operative complaint on February 23, 2017 (see Vol. 1, Ex. B, pp. 27–48). Plaintiffs alleged that the City amended its Charter in 1946 to discriminate against minority voters, in violation of the Equal Protection Clause of the California Constitution, and that the City’s at-large electoral system prevents Latino voters from electing candidates of their choice, in violation of the CVRA. (*Ibid.*)

1. The court trial and subsequent proceedings

8. The court trial in this case began on August 1, 2018. The trial lasted for six weeks, concluding on September 13, 2018.

9. The parties then submitted closing briefs and proposed verdict forms, with plaintiffs’ opening papers filed on September 25, 2018 (Vol. 1, Ex. C, pp. 50–160 (original); Vol. 1, Ex. D,

pp. 162–257 (corrected)), the City’s papers filed on October 15, 2018 (Vol. 2, Ex. E, pp. 266–339), and plaintiffs’ reply filed on October 25, 2018 (Vol. 2, Ex. F, pp. 341–355).

10. In its closing brief, the City argued, among other things, that Santa Monica’s elections are not characterized by racially polarized voting, because Latino-preferred candidates are not usually defeated by white bloc voting; that the City’s at-large electoral system does not dilute Latino voting power, because no hypothetical alternative system would enhance Latino voters’ ability to elect candidates of their choice; and that neither the adoption of the City’s current Charter in 1946 nor the Council’s decision in 1992 not to put a districting measure on the ballot was motivated by racial discrimination. (See Vol. 2, Ex. E, pp. 266–339.) With respect to plaintiffs’ Equal Protection claim, the City argued that plaintiffs’ factual allegations were false and, even if they were true, would not be enough as a matter of law to show that the relevant decisionmakers affirmatively intended to discriminate against minority voters. (*Id.* at pp. 289–297.)

11. On November 8, 2018, the trial court issued a tentative decision stating only that it had found in favor of plaintiffs on both causes of action, without any reasoning or citations to evidence or case law. (See Vol. 2, Ex. H, pp. 363–364.) The court also instructed the parties to submit further briefing in advance of a hearing “regarding the appropriate/preferred remedy for violation of the California Voting Rights Act.” (See *id.* at p. 364.)

12. The City timely filed a request for a statement of decision on November 15, 2018. (See Vol. 2, Ex. I, pp. 366–378.)

13. The parties filed briefs on remedies. (Vol. 2, Ex. J, pp. 380–420; Ex. N, pp. 488–520; Ex. O, pp. 522–536).

14. In their brief concerning remedies, plaintiffs contended that the trial court should order the City to hold an election by April 16, 2019, and also “[p]rohibit anyone not duly elected through a district-based election from serving as a member of the Santa Monica City Council after May 14, 2019.” (Vol. 2, Ex. J, p. 384.) Plaintiffs also urged the Court to adopt the seven-district map drawn by their expert witness. (See *id.* at pp. 387–388.)

15. In its brief concerning remedies, the City argued, among other things, that if the court entered judgment in favor of the plaintiffs, it should “disregard plaintiffs’ contrived deadlines for holding a special election” and “should instead issue an order that is to be carried out only once any judgment against the City is final, with appellate rights exhausted.” (Vol. 2, Ex. N, p. 500.) The City noted that “any order requiring the City to hold a special election or otherwise depart from the status quo would necessarily be mandatory in character, and thus stayed on appeal.” (See *id.* at p. 498.) The City also contended that any order prohibiting council members not elected through district-based elections would, “despite its prohibitory label, . . . be mandatory in effect . . . and therefore would be automatically stayed on appeal.” (*Id.* at pp. 498–499 n.7.)

16. The City also argued that if any remedy were necessary, the court should order the City to fashion such a remedy subject to judicial approval for three reasons. (See *id.* at pp. 500–505.) First, California law requires as much. (See *id.* at pp. 504–

505.) When a court orders a change from at-large elections to district-based elections, section 10010 of the Elections Code calls for a process of public input on potential district lines. Second, Santa Monica is a charter city and should be allowed to fashion its own proposed remedy, subject to judicial oversight. (See *id.* at p. 503.) Third, federal courts adjudicating statutory vote-dilution claims generally do not design remedies in the first instance and instead leave that task to the relevant legislative body, subject to judicial review. (See *id.* at pp. 503–504.)

17. On November 26, 2018, plaintiffs filed an *ex parte* application seeking a temporary restraining order prohibiting the City from certifying the results of its November 2018 City Council election. (See Vol. 2, Ex. K, pp. 422–446.) The trial court denied plaintiffs’ *ex parte* application on November 27, 2018. (See Vol. 2, Ex. M, p. 478:24-25.)

18. On December 12, 2018, the court issued a first amended tentative decision. (See Vol. 3, Ex. Q, pp. 594–596.) In addition to the single sentence finding in favor of plaintiffs on both causes of action, the court issued two orders. First, it “enjoin[ed] and restrain[ed] Defendant from imposing, applying, holding, tabulating, and/or certifying any at-large elections, and/or the results thereof, for any positions on its City Council.” (*Id.* at pp. 594–595, ¶ 2.) Second, it ordered all City Council elections to “be district-based elections, . . . in accordance with the map attached hereto,” which was plaintiffs’ trial exhibit 162 depicting a single “Pico Neighborhood District.” (*Id.* at p. 595, ¶ 3.)

19. On the same day, the court ordered plaintiffs to file a

proposed statement of decision and proposed judgment by January 2, 2019. (Vol. 3, Ex. R, p. 598.)

20. On December 21, 2018, the City filed a second request for a statement of decision, in light of the court's additional findings on remedies in its amended tentative decision. (Vol. 3, Ex. S, pp. 600–631.)

21. On January 2, 2019, plaintiffs filed an ex parte application for clarification of the court's December 12 order. (Vol. 3, Ex. T, pp. 633–653.) Plaintiffs noted that the map attached to the order defined only one district, not the seven drawn by their expert, and that the court did not specify when district-based elections would be held, or what seats would be subject to election first. (*Id.* at pp. 637–639.)

22. In its opposition, the City reiterated its contentions that the court was obligated under section 10010 of the Elections Code to give the City the opportunity to draw districts in the first instance after soliciting public input, and that any order calling for a special election before the next regularly scheduled general municipal election (in November 2020) would be a mandatory injunction and therefore automatically stayed upon the taking of an appeal. (Vol. 3, Ex. U, pp. 657, 659.)

23. At the hearing on plaintiffs' ex parte application, held on January 2, 2019, the court directed plaintiffs to propose a statement of decision and judgment calling for the seven districts drawn by plaintiffs' expert and a special election in 2019. (See Vol. 3, Ex. V, p. 703:9-11.) The court concluded the hearing by stating, "We will let it run and see where it goes in the Court of

Appeal.” (*Id.* at p. 703:11-12.)

24. On January 3, 2019, plaintiffs filed a proposed statement of decision that closely followed the content of their closing brief and a proposed judgment that (a) called for a special district-based election for all seven council seats to be held on July 2, 2019, (see Vol. 3, Ex. W, p. 715), with the districts being those drawn by plaintiffs’ expert, and (b) prohibited “any person, other than a person who has been duly elected to the Santa Monica City Council through a district-based election in conformity with this judgment, . . . from serving on the Santa Monica City Council after August 15, 2019.” (*Ibid.*)

25. Because the proposed statement and proposed judgment were in almost every respect contrary to the factual record and the law, the City timely objected (on January 18, 2019) at great length to both. (See Vol. 4, Ex. X, pp. 772–988.) Among many other things, the City contended that any order of a special election would be automatically stayed by the taking of an appeal, as would any order prohibiting Council members other than those elected by districts from serving past a certain date, as such an order would be prohibitory in form but mandatory in effect. (See *id.* at p. 775.)

2. The judgment, the City’s appeal, and the City’s efforts to seek confirmation of the automatic stay

26. On February 13, 2019, the trial court (a) overruled all of the City’s objections to the proposed judgment in an order con-

taining no reasoning or citations (Vol. 5, Ex. CC, p. 1100); (b) sustained a handful of the City’s objections to the proposed statement of decision, overruling the balance without explanation (Vol. 5, Ex. DD, pp. 1102–1103); (c) issued a statement of decision that was nearly identical to plaintiffs’ proposed statement (see Vol. 5, Ex. BB, pp. 1028–1098); and (d) issued a judgment that was substantively identical to plaintiffs’ proposed judgment. (Vol. 4, Ex. AA, pp. 1005–1019.)

27. Paragraph 8 of the judgment orders the City to “hold a district-based special election,” with district lines drawn by plaintiffs’ expert, “on July 2, 2019, for each of the seven seats on the Santa Monica City Council.” (See *id.* at p. 1017.)

28. Paragraph 9 of the judgment provides: “Any person, other than a person who has been duly elected to the Santa Monica City Council through a district-based election in conformity with this judgment, is prohibited from serving on the Santa Monica City Council after August 15, 2019.” (*Ibid.*)

29. On February 21, 2019, the Santa Monica City Council unanimously resolved to appeal from the judgment.

30. Because the City wished to effect an automatic stay of the trial court’s judgment and thereby avoid making arrangements for a district-based election—the deadline for the earliest of those arrangements is approximately four months before the election date—the City filed its notice of appeal the next day, on February 22, 2019. (See Vol. 5, Ex. FF, pp. 1107–1109.)

31. On February 28, 2019, the City filed an *ex parte* application in the trial court concerning paragraph 9 of the judgment,

which prohibits Council members other than those elected in a district-based system from serving after August 15. (See Vol. 5, Ex. GG, pp. 1111–1152.) The City contended that paragraph 9 is effectively mandatory, because it requires the City to oust its current Council members and to hold a district-based election before August 15. The City therefore sought confirmation that paragraph 9 is automatically stayed on appeal. (*Id.* at p. 1122.) In the alternative, the City requested that the trial court exercise its discretion to stay the enforcement of paragraph 9 pending appeal.

32. Plaintiffs contended in their opposition that paragraph 9 is prohibitory in both form and effect. (See Vol. 5, Ex. HH, pp. 1157–1163.) They argued that the City “could comply with paragraph 9 of the Judgment by holding a district-based election for the seats on its city council, or Defendant could opt to exist with no quorum on its city council”—that is, without any governing body at all. (See *id.* at p. 1162.)

33. At the March 4 hearing on the City’s application, plaintiffs also contended, citing Elections Code section 10300, that if the City were to choose not to hold a district-based election before August 15, the voters could petition the Governor to appoint commissioners to call an election, which would need to be district-based. Plaintiffs thus argued that the City’s only two options were either to hold a district-based election voluntarily before August 15, 2019, or to be forced to do so by the Governor at some point thereafter. (See Vol. 5, Ex. II, p. 1174:19–1175:20.)

34. The trial court took the matter under submission and issued an order denying the City’s application for confirmation on

March 6, 2019, with no reasoning or citations to law. (See Vol. 5, Ex. JJ, p. 1208.) The court also struck, without explanation, the declaration of Dr. Jeffrey Lewis, which the City had submitted with its application to demonstrate that voters, including Latino voters, would suffer irreparable harm from the loss of the representation of their preferred candidates. (*Ibid.*)

35. Just two days after the issuance of the trial court’s order, the City files this petition for relief from this Court so that it may preserve the status quo pending appeal and avoid calling a district-based special election that it should not be under any obligation to hold.

D. Statement of the case

36. A petition for writ of supersedeas must show “that substantial questions will be raised upon the appeal.” (*Deepwell Homeowners’ Protective Ass’n v. City Council of Palm Springs* (1965) 239 Cal.App.2d 63, 66–67; Cal. Rules of Court, rule 8.112(a)(4)(A).) The City’s appeal raises substantial questions with respect to both of plaintiffs’ causes of action.

37. The CVRA has been addressed in published appellate decisions only three times, and those decisions resolve none of the disputed issues in this case. In fact, the leading CVRA case, *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, expressly left unresolved several questions raised in this appeal: (a) “What elements must be proved to establish liability under the CVRA?”; (b) “Is the court precluded from employing crossover or coalition districts (i.e., districts in which the plaintiffs’ protected class does

not comprise a majority of voters) as a remedy?"; and (c) "Does the particular remedy under contemplation by the court, if any, conform to the Supreme Court's vote dilution remedy cases?" (*Id.* at p. 690.)

38. The trial court committed numerous legal errors in deciding plaintiffs' CVRA claim, only a few of which are briefly catalogued here.

a. In determining whether the City's elections are characterized by racially polarized voting, the court erred in focusing exclusively on the performance of Latino (or Latino-surnamed) candidates. But it is well settled that minority-preferred candidates need not themselves be members of the protected class. (See, e.g., *Ruiz v. City of Santa Maria* (9th Cir. 1998) 160 F.3d 543, 551 [joining eight other circuits "in rejecting the position that the 'minority's preferred candidate' must be a member of the racial minority"].) If the trial court had properly identified Latino voters' candidates of choice—in part by acknowledging that in multiple elections, white candidates were preferred by Latino voters to an equal or greater extent than Latino candidates—it could not have concluded that Latino-preferred candidates are usually defeated.

b. The trial court erred in concluding that the City's at-large election system has diluted Latino voting power. To prove vote dilution, a plaintiff must show that a protected class would have greater opportunity to elect candidates of its choice under some other electoral system, which serves as a "benchmark" for comparison. "[I]n order to decide whether an electoral system

has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it ‘should’ be for minority voters to elect their preferred candidates under an acceptable system.” (*Thornburg v. Gingles* (1986) 478 U.S. 30, 88 (conc. opn. of O’Connor, J.)) In Santa Monica, Latino voters account for just 13.6 percent of the voting population (see Vol. 2, Ex. E, p. 273), and would comprise only 30 percent of the voting population in the purportedly remedial district ordered by the court (see Vol. 2, Ex. N, p. 496). Unrebutted testimony demonstrates that the court-imposed districting plan would dilute the voting strength of minority voters in the six other districts—where two-thirds of the City’s Latinos reside. (*Ibid.*)

c. If, as plaintiffs have argued and as the trial court’s decision suggests, vote dilution is not an element of the CVRA, then the statute must be unconstitutional as applied in this case, to the extent that it authorizes predominantly race-based remedies without a showing of any injury, much less a compelling governmental interest.

d. The trial court adopted the districting plan drawn by plaintiffs’ expert, without public input, in violation of section 10010 of the Elections Code. (See Vol. 4, Ex. AA, p. 1019.) That statute requires that a city changing from an at-large method of election to district-based elections—whether doing so voluntarily or, as here, under a court order—must hold a series of public hearings over the boundaries of potential districts. The trial court erred in refusing to allow the City to go through the inclusive, democratic process of public engagement mandated by

law.

e. The trial court erred as a matter of law in concluding that plaintiffs had proven a violation of the Equal Protection Clause. Plaintiffs submitted no evidence, and the court made no findings, demonstrating that the City's electoral system has caused a disparate impact on minority voters—i.e., that some alternative electoral system would have enhanced any minority group's voting strength at any time in the City's history. (E.g., *Johnson v. DeSoto Cty. Bd. of Comm'rs* (11th Cir. 2000) 204 F.3d 1335, 1344.) The fact that few Latinos have served on the Council to date—in addition to being irrelevant, as the focus is on *Latino-preferred* candidates, regardless of their ethnicity—says nothing about how many Latinos *should have* been elected to serve had Latinos voted cohesively throughout the City's history. In addition, the facts found by the trial court do not support its conclusion of intentional discrimination. For example, the court acknowledged that the adoption of the City's current electoral system in the 1946 Charter was favored by every prominent local minority leader, but nevertheless somehow concluded that the Charter (which contained an explicit *anti*-discrimination provision) was motivated by an intent to discriminate against minorities. (See Vol. 5, Ex. BB, pp. 1075, 1079, ¶¶ 65, 70.)

E. Basis for relief

39. Mandatory injunctions are automatically stayed by the taking of an appeal. (Code Civ. Proc., § 916, subd. (a); *Ket-*

tenhofen v. Superior Court (1961) 55 Cal. 2d 189, 191.) “The purpose of the automatic stay provision of section 916, subdivision (a) is to protect the appellate court’s jurisdiction by preserving the status quo until the appeal is decided.” (*URS Corp. v. Atkinson / Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 881, internal quotation marks omitted.)

40. Where, as here, an appeal effects an automatic stay, “the writ of supersedeas will issue ‘in a corrective capacity’ in case of a . . . threatened violation of such stay.” (*In re Dabney’s Estate* (1951) 37 Cal.2d 402, 408; see also *Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 572 [“the appropriate method of challenging the denial of an order to enforce the stay arising under section 916 is a petition for writ of supersedeas”]; *Nielsen v. Stumbos* (1990) 226 Cal.App.3d 301, 303 [“Supersedeas is the appropriate remedy when it appears that a party is refusing to acknowledge the applicability of statutory provisions ‘automatically’ staying a judgment while an appeal is being pursued.”].)

41. Here, plaintiffs have refused to acknowledge that paragraph 9 of the judgment is mandatory in effect and therefore stayed on appeal, and they have contended there will be “consequences” if the current Council is not ousted by August 15. The trial court has likewise refused to confirm that the automatic stay applies to paragraph 9. Accordingly, the City has brought this petition for a corrective writ of supersedeas clarifying that paragraph 9 of the trial court’s judgment was automatically stayed by the filing of the City’s notice of appeal.

42. In determining whether an injunction is mandatory

and therefore automatically stayed on appeal, courts must identify the *substance* of the injunction, regardless of its form. (*URS Corp.*, *supra*, 15 Cal.App.5th at p. 884.) An injunction is “mandatory in effect if its enforcement would be to change the position of the parties and compel them to act in accordance with the judgment rendered.” (*Musicians Club of L.A. v. Superior Court* (1958) 165 Cal.App.2d 67, 71.)

43. Paragraph 9 states: “Any person, other than a person who has been duly elected to the Santa Monica City Council through a district-based election in conformity with this Judgment, is prohibited from serving on the Santa Monica City Council after August 15, 2019.” (Vol. 4, Ex. AA, p. 1017.)

44. Paragraph 9 is mandatory in effect for two reasons. First, it changes the status quo by compelling duly elected Council members “affirmatively to surrender a position which [they] hold[],” or, presumably, the City to take affirmative action to remove them. (*Clute v. Superior Court* (1908) 155 Cal. 15, 20 [holding injunction was mandatory in effect even though prohibitory in form].)

45. Second, paragraph 9 effectively compels the City to conduct a district-based election in advance of August 15, 2019. The City’s Charter assigns all the City’s powers to its Council. (§ 605.) If the current Council members cannot continue represent the City after August 15, 2019, then the City will be left without any governing body. To avert that outcome, the City must install new Council members, but the judgment requires that they be elected in a district-based election. And under California law,

any election must be noticed at least 113 days before the election date. (Elec. Code, § 12101.) Accordingly, paragraph 9 effectively requires the City to give notice of an election in short order and to conduct that election in July.

46. Paragraph 9 is analogous to the injunctions entered in many other cases in which the Supreme Court and Courts of Appeal have found relief to be mandatory in effect even if prohibitory in form. (See, e.g., *Feinberg v. Doe* (1939) 14 Cal.2d 24, 29 [order prohibiting employment of non-union worker, “in effect, commands the defendants to release the said employee from their employment”]; *Clute, supra*, 155 Cal. at p. 20 [order prohibiting hotel manager from fulfilling duties was mandatory because it “compel[led] him affirmatively to surrender a position which he h[eld]”]; *Davis, supra*, 228 Cal.App.2d at p. 838 [order prohibiting actress from filming scenes for other studios tantamount to a mandatory injunction that she film for Paramount]; *Ambrose v. Alioto* (1944) 62 Cal.App.2d 680, 686 [order prohibiting defendant from delivering fish to any canner except one equivalent to an order requiring defendant to deliver to that canner].)

47. In the alternative, if this Court deems paragraph 9 to be prohibitory in effect as well as form, it should exercise its discretion to issue the writ to stay the enforcement of paragraph 9 during the appeal, in order to avoid irreparable harm to the City and the public. (Code Civ. Proc., § 923; e.g., *Mills v. Cty. of Trinity* (1979) 98 Cal.App.3d 859, 861.)

48. For the reasons set out above (§§ 38(a)–(e)), the City’s appeal raises substantial questions, many of first impression in

California’s appellate courts, and the City has a substantial likelihood of prevailing on appeal.

49. Should this Court decline to grant this petition and then later reverse the judgment, the enforcement of paragraph 9 during the pendency of the City’s appeal will have worked irreparable harm on the City, its current Council members, and the public. These irreparable harms include:

a. The voters’ will would be disregarded. Santa Monica voters have twice rejected a proposal to revert to district-based elections (which were in place in Santa Monica between 1906 and 1914) for entirely non-discriminatory reasons.

b. Relatedly, all Santa Monica voters will lose the candidates that they duly elected to serve until 2020 and 2022—nullifying the fundamental constitutional rights of those voters to have their voices heard in the electoral process. (Cal. Const., art. II, § 2.5 [“A voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted”].)

c. The City would be compelled to hold districted elections this summer, with the district lines drawn by plaintiffs’ expert rather than through the public-hearing process mandated by section 10010 of the Elections Code. Going through this process would result in voter confusion and almost \$1 million in direct and unrecoverable costs to the City.

d. The court-imposed districts threaten to *dilute* the voting power of the vast majority of Latinos who live outside of the one purportedly remedial district ordered by trial court. The likely result of a district-based election this summer is that the

City goes from its current Council, where most of its members were the preferred candidates of Latinos in the 2016 and 2018 elections, to a new Council that Latinos have had little say in electing.

F. The Court has jurisdiction, and this petition is timely.

50. This Court is authorized to grant a writ of supersedeas. “An appellate court may issue a writ of supersedeas to stay a judgment . . . where an appeal from the judgment or order is pending.” (*In re Christy L.* (1986) 187 Cal.App.3d 753, 759; see also *Sun-Maid Raisin Growers of Cal. v. Paul* (1964) 229 Cal.App.2d 368, 374 [“The issuance of a writ of supersedeas . . . is within the inherent power of the court.”].)

51. Here, a notice of appeal was filed on February 22, 2019, from a judgment entered on February 13, 2019.

G. Authenticity of exhibits

52. Exhibits A–JJ accompanying this petition are true and correct copies of original documents on file with the trial court or certified reporters’ transcripts.

53. Exhibit GG contains three declarations submitted to show the irreparable harm that would be caused if the stay of the trial court’s order prohibiting duly elected Council members from serving past August 15, 2019, were not stayed pending this appeal, and the lack of harm to Respondents if a stay is granted. These declarations were filed in the trial court in connection with

the City's application for a stay (and the trial court issued an order striking Dr. Lewis's declaration without explanation).

54. The exhibits are paginated consecutively from page 1 through 1208.

III. PRAYER FOR RELIEF

The City prays that this Court:

1. Issue a writ of supersedeas confirming that paragraph 9 of the trial court's judgment entered on February 13, 2019, was automatically stayed by the City's noticing of an appeal, and that the stay will remain in effect until the appeal is resolved;
2. In the alternative, issue a writ of supersedeas staying paragraph 9 of the trial court's judgment entered on February 13, 2019, and continuing the stay during the pendency of this appeal;
3. Grant any temporary stay of the trial court's judgment pending this Court's determination of this petition (if necessary); and
4. Grant such other relief as is just and proper.

DATED: March 8, 2019

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: 

Theodore J. Boutrous, Jr.

Attorneys for Petitioner-Defendant City of Santa Monica

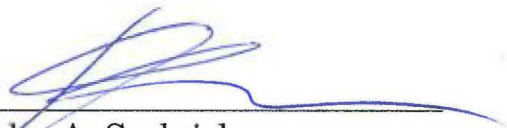
IV. VERIFICATION

I, Kahn A. Scolnick, declare as follows:

I am one of the attorneys for Petitioner in this matter, and I am authorized to execute this verification on its behalf. I have read the foregoing petition and know its contents. The facts alleged in the petition are within my own knowledge, and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, rather than Petitioner, verify this petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on March 8, 2019, in Los Angeles, California.

By: _____


Kahn A. Scolnick

V. MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction

Paragraph 9 of the trial court’s judgment states: “Any person, other than a person who has been duly elected to the Santa Monica City Council through a district-based election in conformity with this Judgment, is prohibited from serving on the Santa Monica City Council after August 15, 2019.” (Vol. 4, Ex. AA, p. 1017.) The trial court refused either to confirm that paragraph 9 is mandatory in effect and therefore automatically stayed on appeal or, in the alternative, to exercise its discretion to stay the enforcement of paragraph 9 so as to avoid irreparable harm to the City, its Council members, and the public. (See Vol. 5, Ex. JJ, p. 1208.)

This Court should issue a writ of supersedeas in a corrective capacity, confirming that paragraph 9 is mandatory in effect because it requires the City to go without a government after August 15—thus forcing the City to change the status quo by holding a district-based election this summer. As a mandatory injunction, paragraph 9 was automatically stayed by the filing of the City’s notice of appeal.

In the alternative, this Court should issue the writ in the exercise of its discretion, because without a stay of paragraph 9’s enforcement during the appeal, the City, the Council members, and the public will suffer irreparable harm, including the deprivation of voters’ constitutional rights to choose their elected officials, and almost \$1 million in unrecoverable election-related costs.

B. Standard for granting a writ of supersedeas

Section 923 of the Code of Civil Procedure grants this Court virtually unlimited discretion to issue orders preserving the status quo in protection of its own jurisdiction. (*People ex rel. San Francisco Bay Conservation & Dev. Comm'n v. Town of Emeryville* (1968) 69 Cal.2d 533, 538–539.) “The right of appeal would be but an empty thing if the appellate court could not, and in proper cases did not, afford to the appellant a means whereby the fruits of victory were fully preserved to him in the event of a reversal of the judgment against him.” (*Deepwell, supra*, 239 Cal.App.2d at p. 66.)

When, as here, an appeal effects an automatic stay, “the writ of supersedeas will issue ‘in a corrective capacity’ in case of a . . . threatened violation of such stay.” (*Dabney’s Estate, supra*, 37 Cal.2d at p. 408.) “[U]pon a mistaken attempt of the trial court to enforce [an injunction that is mandatory in character], the appellant is entitled as a matter of right to issuance of the writ of supersedeas.” (*Food & Grocery Bur. of S. Cal. v. Garfield* (1941) 18 Cal.2d 174, 176–177.) In these circumstances, because “the perfecting of the appeal . . . operates to automatically stay proceedings in the court below, it is unnecessary . . . to balance or weigh the arguments with reference to the possible irreparable injury to appellants or respondents” (*Feinberg, supra*, 14 Cal.2d at p. 29.)

The writ is also available where the injunction at issue is prohibitory in effect. (*City of Pasadena v. City of Alhambra* (1946)

75 Cal.App.2d 91, 98.) The stay of such an injunction is appropriate where (a) the petitioner will suffer irreparable harm absent relief and (b) the petitioner demonstrates that “substantial questions will be raised on appeal.” (*Deepwell, supra*, 239 Cal.App.2d at pp. 66–67; see also, e.g., *Meyer v. Arsenault* (1974) 40 Cal.App.3d 986, 989; *Wilkman v. Banks* (1953) 120 Cal.App.2d 521, 523.)

C. A corrective writ of supersedeas is necessary to clarify that paragraph 9 of the judgment, though prohibitory in form, is mandatory in effect.

Mandatory injunctions are automatically stayed pending appeal. (Code Civ. Proc., § 916, subd. (a); *Ambrose, supra*, 62 Cal.App.2d at p. 686.) The form of the injunction does not determine its effect: “What may appear to be negative or prohibitory frequently upon scrutiny proves to be affirmative and mandatory.” (*Byington v. Superior Court* (1939) 14 Cal.2d 68, 70; see also *Davis, supra*, 228 Cal.App.2d at p. 835 [“The character of an injunction . . . is determined not so much by the particular designation given to it by the court directing its issuance, as by the nature of its terms and provisions, and the effect upon the parties against whom it is issued.”].)

To discern the nature and effect of an injunction, courts assess whether it calls for the disruption of the status quo. “An order enjoining action by a party is prohibitory in nature if its effect is to leave the parties in the same position as they were prior to the entry of the judgment. On the other hand, it is mandatory in

effect if its enforcement would be to change the position of the parties and compel them to act in accordance with the judgment rendered.” (*Musicians Club of L.A.*, *supra*, 165 Cal.App.2d at p. 71.)

Paragraph 9 of the judgment states: “Any person, other than a person who has been duly elected to the Santa Monica City Council through a district-based election in conformity with this Judgment, is prohibited from serving on the Santa Monica City Council after August 15, 2019.” (Vol. 4, Ex. AA, p. 1017.) This injunction, although prohibitory in form, is mandatory in effect because its enforcement would leave the parties in a dramatically different position than the one they occupied before the judgment issued.

First, paragraph 9 coerces the City to hold a district-based election before August 15, 2019, in accordance with the district map drawn by plaintiffs’ expert. If the current Council members cannot continue to serve after August 15, then the City must make arrangements for seven new Council members to take their seats. There is no practical alternative, because the City can be governed only by its seven-member Council. (See Santa Monica City Charter, § 400 [defining powers of City], § 605 [“All powers of the City shall be vested in the City Council”], § 600 [City Council shall consist of seven members].)

Under paragraph 9, the only persons eligible to become Council members after August 15 are those who have “been duly elected to the Santa Monica City Council through a district-based election in conformity with this Judgment.” (Vol. 4, Ex. AA, p. 1017.) The City therefore would need to hold a district-based

election. And for that election to take place in time for new Council members to take their seats on or around August 16, 2019, the City would need to notice the election no later than April 8, 2019, which would mean a resolution from the Council by April 1, 2019. (Elec. Code, § 12101 [notice of election must be given at least 113 days before election date]; Vol. 5, Ex. GG, p. 1134, ¶ 3 [City Clerk explaining that the final Tuesday on which an election could take place with sufficient time for votes to be counted before August 15, 2019, is July 30, 2019].) Paragraph 9 thus requires the City to give notice of an election in a matter of weeks and then to hold a district-based election in July—which is exactly what is commanded by the expressly mandatory portion of the judgment that is unquestionably stayed.

Paragraph 9 is analogous to many injunctions entered in other cases that were prohibitory in form but mandatory in effect. In *Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, for example, Paramount sued Bette Davis when she refused to film an additional scene for a movie. At the time, Davis was filming another movie under an exclusive contract with a different studio. The trial court prohibited Davis from filming any other movies until she filmed the additional scene for Paramount. Davis appealed and sought a writ of supersedeas. The Court of Appeal granted the writ, holding that “the injunctive order, although framed in prohibitory language, was intended to coerce or induce defendant into immediate affirmative action, i.e., to make the additional scene for Paramount.” (*Id.* at p. 838.) Paragraph 9 puts the City in the same position as Davis, leaving it no choice but to

hold a district-based election—in other words, making mandatory the very act that the City has filed its appeal to avoid.

Similarly, in *Ambrose v. Alioto* (1944) 62 Cal.App.2d 680, the trial court prohibited the defendant “from delivering to Sun Harbor Packing Company, or to anyone other than Westgate Sea Products Co., any fish caught on any fishing voyage made by the vessel Dependable,” notwithstanding a contract to deliver to Sun Harbor. (*Id.* at p. 681, internal quotation marks omitted.) The Court of Appeal held that this injunction was “but another means of stating that defendant must cease delivering to Sun Harbor Packing Company and must deliver fish to Westgate Sea Products Co.,” and therefore was mandatory and automatically stayed pending appeal. (*Id.* at p. 686.)

Paragraph 9 is substantially similar to the challenged injunction in *Ambrose*: it is “but another means of stating” that the City must hold district-based elections in the short term. Just as the defendant-appellant in *Ambrose* could continue honoring the challenged contract and delivering fish to Sun Harbor during the appeal, so, too, should the current Council be able to remain seated throughout the pendency of the City’s appeal. To demand otherwise would be to compel an affirmative act and a departure from the status quo. (*Ibid.*)

Davis and *Ambrose* are only two of the many cases in which California’s appellate courts have reaffirmed the principle that substantively mandatory injunctions, even if prohibitory in form, are automatically stayed by operation of law for the duration of an

appeal. (E.g., *Garfield*, 18 Cal.2d at pp. 177–178; *Byington v. Superior Court of Stanislaus Cty.* (1939) 14 Cal.2d 68, 72; *Agricultural Labor Bd. v. Superior Court* (1983) 149 Cal.App.3d 709, 713; *Podesta v. Linden Irrigation Dist.* (1955) 132 Cal.App.2d 250, 261; *In re O’Connell* (1925) 75 Cal.App. 292, 298.)

Second, paragraph 9 is mandatory in effect because its enforcement would require the City to strip the seven current Council members of their titles and oust them from their duly elected positions. Courts have held that this sort of injunction is mandatory in character and therefore automatically stayed on appeal.

The Supreme Court’s decision in *Clute v. Superior Court* (1908) 155 Cal. 15 is directly on point. There, the treasurer and manager of a corporation operating a hotel was ousted from his positions. In subsequent litigation over the legitimacy of that ouster, the trial court prohibited the erstwhile corporate officer from holding himself out as such or otherwise doing his job. He appealed and continued to do his job; the trial court held him in contempt. The Supreme Court reversed, holding that the injunction was mandatory, “though couched in terms of prohibition,” because it impliedly required the former corporate officer to turn over the hotel and the personal property in it to someone else—it “compels him affirmatively to surrender a position which he holds” (*Id.* at p. 20.) Accordingly, the injunction was automatically stayed by the taking of an appeal, and “no contempt proceedings against him should have been entertained.” (*Ibid.*) The same conclusion should follow here, as an order prohibiting a corporate officer from fulfilling his job duties is little different from the trial

court's order prohibiting Council members from serving after August 15.

The trial court's March 6, 2019, order, which declined to confirm the automatic stay of paragraph 9, contained no reasoning. Nonetheless, the trial court appears to have agreed with plaintiffs' effort to distinguish *Clute* on the ground that *Clute* involved disputed control over real property. Even if that were a valid distinction—and it is not, because the case concerned the surrender of an *office* as well as the surrender of property—the trial court failed to account for the many other cases (including those cited by the City) that had nothing to do with real property.

In *Feinberg v. Doe* (1939) 14 Cal.2d 24, for example, the Supreme Court held that an order prohibiting defendants from continuing to employ a particular non-union worker was mandatory because “[i]t, in effect, commands the defendants to release the said employee from their employment.” (*Id.* at p. 29.) Here, similarly, the trial court's order requires the City to strip the current Council members of their seats.

The recent decision in *URS Corp. v. Atkinson / Walsh Joint Venture* (2017) 15 Cal.App.5th 872, another case not concerning disputed control over real property, holds that an order disqualifying a litigant's lawyer is automatically stayed on appeal. After the trial court denied a motion for stay pending appeal, the Court of Appeal granted a petition for a writ of supersedeas, holding that “[a]n order disqualifying an attorney from continuing to represent a party in ongoing litigation is a mandatory injunction because it requires affirmative acts that upset the status quo. . . .”

(*Id.* at p. 886.) Absent a stay, there was also serious risk of “mooting the appeal,” insofar as the petitioner would “need to move on . . . and hire replacement counsel” and might choose not to pursue an independent appeal “because it will not make sense to reinsert [disqualified counsel] into the proceedings even if the order is reversed.” (*Ibid.*)

Here, likewise, paragraph 9 would require the City to proceed with a district-based election whose animating premise and particulars (the district lines drawn by plaintiffs and adopted by the Court without public input and in violation of Elections Code section 10010) will be the very subject of the City’s appeal. And although holding a district-based election during the appeal would not deprive this Court of jurisdiction, it would plainly moot the City’s argument that it should not be compelled to hold any such an election *at any time*, not to mention any dispute over who should be seated on the Council during the pendency of the appeal. If seven new Council members were to assume those seats, and if the City prevails on appeal, there would be no turning back the clock; the City would have been governed by the wrong people, potentially for years.

D. There is no support for plaintiffs’ contentions, and the trial court’s implicit conclusion, that paragraph 9 is prohibitory in effect.

The trial court (although it offered no reasoning to support its decision) appears to have accepted one or more of plaintiffs’ arguments as to why paragraph 9 is prohibitory in effect. None of them has merit.

First, the trial court may have improperly elevated form over substance, concluding that, by its terms, paragraph 9 does not call for the City to do anything at all after August 15. But plaintiffs admitted that paragraph 9, if enforced, would effect a *massive* change in the status quo: “Defendant could comply with paragraph 9 of the Judgment by holding a district-based election for the seats on its city council, or Defendant could opt to exist with no quorum on its city council”—that is, with no Council members at all. (Vol. 5, Ex. HH, p. 1162.) At the hearing on March 4, plaintiffs further suggested that if the City did nothing at all, the Governor might, under section 10300 of the Elections Code, appoint commissioners to call a district-based election. (See Vol. 5, Ex. II, pp. 1174, 1184.)

According to plaintiffs, then, paragraph 9 will result in district-based elections—the very relief, set out in paragraph 8 of the judgment, that is unquestionably stayed—or, in the (completely unrealistic) alternative, in the complete disbanding of the City’s government. Whether paragraph 9 compels the City to hold a district-based election or to strip Council members of their seats and

somehow go without a governing body, the effect of “its enforcement would be to change the position of the parties and compel them to act in accordance with the judgment rendered”—the very essence of a mandatory injunction. (*Musicians Club, supra*, 165 Cal.App.2d at p. 71.)

Second, plaintiffs are wrong that “[w]here an injunction has both mandatory and prohibitory features, the prohibitory portions are not stayed *even if they have the effect of compelling compliance with the mandatory portions of the injunction.*” (Vol. 5, Ex. HH, p. 1157.) This made-up rule flatly contradicts the long line of cases holding that if the effect of an injunction is to compel affirmative action, then its prohibitory form is irrelevant. (See, e.g., *Kettenhofen, supra*, 55 Cal.2d at p. 191; *Stewart v. Superior Court* (1893) 100 Cal. 543, 544–546; *URS Corp., supra*, 15 Cal.App.5th at pp. 884–885.)

Further, plaintiffs’ only support for their manufactured rule is *Ohaver v. Fenech* (1928) 206 Cal. 118, which they egregiously mischaracterize. Plaintiffs summarize that case with the following parenthetical: “injunction prohibiting the defendants from feeding garbage to their hogs was prohibitory in nature, and therefore not stayed by the subsequent appeal, even though the inevitable consequence of the injunction was to require the defendant to remove the hogs from their then-current location.” (Vol. 5, Ex. HH, p. 1157.) But it was the argument of the losing litigant, *not the holding of the Supreme Court*, that the challenged injunction would inevitably require the appellant ranchers to move their hogs.

In response to that argument, the Court in *Ohaver* concluded that “[t]his does not necessarily follow. The appellants may feed their hogs other food” and therefore need not “make any change in the locality in which their hogs are kept.” (206 Cal. at p. 123.) In other words, the injunction was truly prohibitory in nature, because it did not impliedly require the defendant to take any affirmative action. Here, by contrast, paragraph 9 *does* impliedly require affirmative action—the City must strip the Council members of their seats and hold a district-based election.

Third, the trial court may have erroneously accepted plaintiffs’ contention that a statutory exception to the automatic-stay rule applies in this case. In particular, section 917.8 of the Code of Civil Procedure provides that there is no stay when “a party to the proceeding has been adjudged guilty of usurping, or intruding into, or unlawfully holding a public office, civil or military, within this state.” The statute simply does not apply here.

Section 917.8’s exception to the automatic-stay rule applies only to actions brought in *quo warranto* under section 803 of the Code of Civil Procedure—which is a special cause of action brought on behalf of the Attorney General to determine someone’s right to hold a public office. The two sections are phrased in materially identical language.² And the California Supreme Court

² Section 803 provides, in relevant part: “An action may be brought by the attorney-general . . . against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, . . . within this state.”

has held that where, as here, an action was not brought in *quo warranto* and was instead a challenge to an election, section 917.8 (previously section 949) does not apply; as a result, “the perfecting of the appeal by the party aggrieved, *ipso facto*, operates as a *supersedeas*.” (*Day v. Gunning* (1899) 125 Cal. 527, 530; see also *Anderson v. Browning* (1903) 140 Cal. 222, 223 [holding that “the certificate of election continues unimpaired during the pendency of the appeal”].) Legal treatises confirm this narrow construction of section 917.8: “Inasmuch as the language of [section 917.8] is similar to that contained in another statute authorizing an action in *quo warranto* for usurpation [section 803], it is apparent that the statutory exception under discussion refers *only* to actions of this character.” (Cal. Jur. 3d, Appellate Review, § 412, italics added.)

In opposing the City’s application for confirmation of the automatic stay, plaintiffs were unable to cite a single case applying section 917.8 or its predecessor to a context like this one, and instead argued that the current Council members are now “unlawfully” holding their seats under the terms of the statute. (Vol. 5, Ex. HH, pp. 1163–1165; Ex. II, pp. 1169–1196.) But *Day* expressly rejected such an argument, holding that “it cannot be said that the respondent is unlawfully holding his office” because “he *entered upon it lawfully* by virtue of his certificate of election. If, by matters arising after his incumbency, he has lost the right to retain the office”—such as, in this case, a judgment that the City’s electoral system violates the CVRA, and that the current Council members elected under that system cannot continue to serve after

a specific date—“still it cannot be adjudged in this proceeding that he is usurping, intruding, or unlawfully holding office, within the intent and meaning of section 949.” (125 Cal. at p. 529, italics added.) The word “unlawfully,” then, is not some catch-all that must cover this case simply because plaintiffs say so. It is a term of art that applies specifically and solely in *quo warranto* proceedings.

And this, of course, is not a *quo warranto* proceeding. The trial court’s judgment makes no reference to section 803 or the *quo warranto* remedy. But more importantly, this case was not brought directly by the Attorney General or by a relator authorized by the Attorney General. (See Code Civ. Proc., § 803; see also *Nicolopoulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1228 [addressing circumstances under which private parties may serve as relators after applying for and receiving leave from the Attorney General to bring a *quo warranto* proceeding]; *Oakland Mun. Improvement League v. City of Oakland* (1972) 23 Cal.App.3d 165, 170 [cause of action for *quo warranto* “is vested in the People, and not in any individual or group”].) Under *Day*, then, section 917.8 does not and cannot apply.

Plaintiffs argued below that *Day* was no longer good law in light of the CVRA. Specifically, plaintiffs contended that the CVRA authorizes state courts to grant any remedy that a federal court might grant in a federal Voting Rights Act case, and that federal courts have the authority to order immediate elections. (Vol. 5, Ex. HH, p. 1165; Ex. II, pp. 1181–1182.) But that argument is entirely beside the point.

The question before the trial court, and now before this Court, is not whether the trial court had the remedial authority to order an immediate election or to prohibit Council members from serving after a certain date. The question, rather, is whether such an order was stayed automatically by operation of law or ought to be stayed in the exercise of judicial discretion. Federal voting rights decisions provide no guidance on the application of the automatic-stay rule, as there is no automatic stay of mandatory injunctions in federal court upon the taking of an appeal. (Wright & Miller, *Injunction Pending Appeal*, 11 Fed. Prac. & Proc. Civ. § 2904 (3d ed.).) And the CVRA neither displaced the case law concerning section 917.8 nor created a new exception to the automatic-stay rule.

E. In the alternative, the Court should exercise its discretion to issue the writ to prevent irreparable harm to the City and the public.

Even if the Court deems paragraph 9 to be prohibitory in effect as well as form, it should nevertheless exercise its discretion to issue the writ in order to prevent the City, its Council members, and the public from suffering irreparable harm. (*City of Pasadena, supra*, 75 Cal.App.2d at p. 98 [“Irrespective of whether an injunction is mandatory or prohibitory, this court has the inherent power to issue a writ of supersedeas if such action is necessary or proper to the complete exercise of its appellate jurisdiction [citations], and may issue the writ upon any conditions it deems just.”]; see also, e.g., *Mills, supra*, 98 Cal.App.3d at p. 861 [issuing writ to avoid “irreparable injury” from repayment of fees collected

by a county planning department]; *Meyer v. Arsenault* (1974) 40 Cal.App.3d 986, 989 [issuing writ to avoid “irreparable injury” in the form of money that likely could not be recovered once paid]; *Wilkman v. Banks* (1953) 120 Cal.App.2d 521, 523 [issuing writ to avoid “irreparable damage” from the loss of “the fruits of a favorable determination on appeal if [appellants] were to be precluded in the meantime from continuing in their business of operating a sanitarium”].)

1. The City’s appeal raises substantial issues, several of first impression

In evaluating the petition, the court should consider “the respective rights of the litigants,” and accordingly “contemplate[] the possibility of an affirmative of the decree as well as of a reversal.” (*Garfield, supra*, 18 Cal.2d at p. 177.) Here, there is a substantial likelihood of a reversal on one or more legal grounds, such that there is real risk that the City, the current Council members, and the public would suffer irreparable harm from the enforcement of paragraph 9 during the City’s appeal. In entering a judgment in the plaintiffs’ favor, the trial court erred in numerous respects, a few of which are briefly catalogued below.

a. The trial court erred in focusing exclusively on the performance of Latino candidates, ignoring the preferences of Latino voters.

To prevail on their CVRA claim, plaintiffs had to prove, among other things, legally significant racially polarized voting—

in this case, that Latino voters cohesively prefer certain candidates, and that those candidates are usually defeated as a result of white bloc voting. (*Gingles, supra*, 478 U.S. at pp. 49–51; see also Elec. Code, § 14026, subd. (e) [defining “racially polarized voting” by reference to federal case law].)

The first step in determining whether voting has been racially polarized is identifying the preferred candidates of the relevant minority group. (*Collins v. City of Norfolk* (4th Cir. 1989) 883 F.2d 1232, 1237 [“The proper identification of minority voters’ ‘representatives of . . . choice’ is critical”].) The trial court erred by focusing exclusively on the performance of Latino (or Latino-surnamed) *candidates*, and ignoring the preferences of the Latino *voters* when they preferred candidates of other races. (See, e.g., Vol. 5, Ex. BB, pp. 1044–1045 [table showing regression results only for Latino or Latino-surnamed candidates in seven elections].)

Minority-preferred candidates need not themselves be members of the protected class, as courts have repeatedly held. (See, e.g., *Ruiz, supra*, 160 F.3d at p. 551 [joining eight other circuits “in rejecting the position that the ‘minority’s preferred candidate’ must be a member of the racial minority”].) To indulge the presumption that voters always prefer candidates of their own race “would itself constitute invidious discrimination of the kind that the Voting Rights Act was enacted to eradicate, effectively disenfranchising every minority citizen who casts his or her vote for a non-minority candidate.” (*Lewis v. Alamance Cty., N.C.* (4th Cir. 1996) 99 F.3d 600, 607; see also *NAACP, Inc. v. City of Niagara Falls, N.Y.* (2d Cir. 1995) 65 F.3d 1002, 1016 [such a ruling “would

project a bleak, if not hopeless, view of our society” and would “presuppose the inevitability of electoral apartheid”].) If the trial court had properly identified Latino-preferred candidates, in part by acknowledging that in multiple elections white candidates were preferred by Latino voters to an equal or greater extent than Latino candidates, there is no dispute that Latino-preferred candidates were not “usually” defeated.

To take but one example, in the 2008 Council election, a losing Latina-surnamed candidate, Linda Piera-Avila, is estimated to have received the support of just one-third of Santa Monica’s Latino voters. (See Vol. 2, Ex. E, p. 313.) But two white candidates, Ken Genser and Richard Bloom, who both won, are each estimated to have received the support of half of Latino voters. (*Ibid.*) The trial court never accounted for the possibility that Latino voters may have legitimately preferred Mr. Genser and Mr. Bloom over Ms. Piera-Avila, or that voters prefer candidates for a variety of reasons having nothing to do with the candidates’ race or ethnicity—such as the candidates’ stances on the issues of interest to the voters.

The 2002 Council election showcases another flaw in the court’s analysis. There, a losing Latina candidate, Josefina Aranda, is estimated to have received the support of 82.6% of Latino voters. (See *id.* at p. 312.) But Latino support for a winning white candidate, Kevin McKeown, was almost identical, at 76.8% (and may indeed have been higher, as there is substantial uncertainty in all of these estimates, which both parties’ experts acknowl-

edged). (*Ibid.*) Even assuming for argument's sake that Ms. Aranda's defeat was one of the rare instances in which a Latino-preferred candidate did not prevail in Santa Monica elections, the trial court should not have disregarded the identically strong showing of Mr. McKeown simply because he is white.

When Latino-preferred candidates are counted accurately, and not on the basis of an erroneous and unconstitutional assumption that they must themselves be Latino (or Latino-surnamed), it becomes clear that those candidates prevail more often than not, contradicting the trial court's conclusion that Latino-preferred candidates usually lose. (Vol. 2, Ex. E, pp. 278–281, 311–315.) Because plaintiffs did not prove a legally significant pattern of racially polarized voting for this and other reasons, the trial court's judgment should be reversed.

b. The trial court erred in holding that plaintiffs proved vote dilution.

A public entity violates the CVRA only if its at-large method of election “*impairs* the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, *as a result of the dilution* or the abridgment of the rights of voters who are members of a protected class.” (Elec. Code, § 14027, italics added.) Courts interpreting similar language in § 2 of the federal Voting Rights Act require proof of *harm* (vote dilution) and *causation* (a connection between the harm and the electoral system). (E.g., *Gingles*, *supra*, 478 U.S. at 48, fn. 15; *Gonzalez v. Ariz.* (9th Cir. 2012) 677 F.3d 383, 405; *Aldasoro v.*

Kennerson (S.D.Cal. 1995) 922 F.Supp. 339, 369, fn. 10.) California courts have stated, but not yet held, that the CVRA similarly demands proof of vote dilution caused by an election system. (E.g., *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 802.)

To prove vote dilution, a plaintiff must show that a protected class would have greater opportunity to elect candidates of its choice under some other electoral system, which serves as a “benchmark” for comparison. (See, e.g., *Reno v. Bossier Parish Sch. Bd.* (1997) 520 U.S. 471, 480; *Holder v. Hall* (1994) 512 U.S. 874, 880 (plurality); *Gingles, supra*, 478 U.S. at 50, fn. 17.) “[I]n order to decide whether an electoral system has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it ‘should’ be for minority voters to elect their preferred candidates under an acceptable system.” (*Gingles, supra*, 478 U.S. at 88 (conc. opn. of O’Connor, J.).)

Because Latino voters account for just 13.6 percent of the City’s voting population and are dispersed throughout the City, they would comprise only 30 percent of the voting population in the purportedly remedial district ordered by the court. (See Vol. 2, Ex. E, p. 283; Ex. N, pp. 496–497.) Plaintiffs’ expert on remedial effectiveness could not identify a single judicially created district in California or elsewhere in which the minority voting population was anywhere near that small. (*Ibid.*) And not only would the purportedly remedial district cure no ills, unrebutted testimony demonstrates that it would create new ones by diluting the voting strength of minority voters, including Latinos, outside of

that district. (*Ibid.*) This is particularly concerning given that two-thirds of the City’s Latinos live *outside* the purportedly remedial district. (Vol. 4, Ex. X, pp. 799, 852.)

Because it is impossible, given the City’s basic demographic facts, to prove that any other electoral system would give Latino voters the ability to elect candidates of their choice, the trial court’s judgment should be reversed.

c. The trial court’s holding renders the CVRA unconstitutional as applied to the facts of this case.

If, as plaintiffs have argued and the trial court’s decision suggests, vote dilution is not an element of the CVRA, then the statute must be unconstitutional to the extent that it authorizes predominantly race-based remedies without a showing of any injury, much less a compelling governmental interest.

The United States Constitution forbids the imposition of any predominantly race-based remedy unless that remedy is narrowly tailored to serve a compelling governmental interest. (*Cooper v. Harris* (2017) 137 S.Ct. 1455, 1463–1464; *Shaw v. Hunt* (1996) 517 U.S. 899, 907–908.) Courts have assumed without deciding that governments have a compelling interest in remedying vote dilution. (*Cooper*, 137 S.Ct. at p. 1464.)

Here, the trial court has adopted a purportedly remedial district that was drawn, by the admission of plaintiffs’ expert, to maximize the number of Latino voters within it, without any compelling justification for engaging in such race-based classifications. (E.g., Vol. 2, Ex. N, pp. 495–497; Vol. 4, Ex. X, pp. 858–

861.) There is no evidence of vote dilution: The districting plan approved by the trial court would not give Latinos within the purportedly remedial district the ability to elect candidates of their choice, and it would splinter two-thirds of the City's Latinos across six other districts, submerging them in overwhelmingly white districts. (See Vol. 2, Ex. E, pp. 283, 287; Ex. N, pp. 496–497.) There thus could not have been any lawful basis for the court to compel the City to adopt districts.

d. The trial court's judgment violates Elections Code section 10010.

The trial court rubber-stamped a districting plan drawn by plaintiffs' expert, without public input, in violation of section 10010 of the Elections Code. That statute requires that a city changing from an at-large method of election to district-based elections hold a series of public hearings over the boundaries of potential districts. Section 10010 expressly "applies to . . . a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election." The court erred in refusing the City's repeated requests to follow the inclusive, democratic process of public engagement mandated by law. (E.g., Vol. 2, Ex. N, pp. 504–505; Vol. 4, Ex. X, pp. 775, 883–884.)

e. The trial court's findings are legally insufficient to demonstrate discriminatory impact or intent.

The trial court erred in concluding that plaintiffs had proven a violation of the Equal Protection Clause. To prevail on that claim, plaintiffs were obligated to demonstrate that the City's

at-large electoral system has caused a disparate impact that was intended by the relevant decisionmakers. (See *Rogers v. Lodge* (1982) 458 U.S. 613, 617; *Personnel Adm'r of Mass v. Feeney* (1979) 442 U.S. 256, 279.) Even if the facts found by the trial court were entirely correct—and they were not—those facts still would not remotely clear this high bar.

As an initial matter, plaintiffs submitted no evidence, and the court made no findings, demonstrating that the City's electoral system has caused any disparate impact—which must be proven with evidence that a protected class would have greater opportunity under some other method of election. (E.g., *Johnson v. DeSoto Cty. Bd. of Comm'rs* (11th Cir. 2000) 204 F.3d 1335, 1344.) No minority group, including Latinos, has ever accounted for a large percentage of the City's total population. (E.g., Vol. 4, Ex. X, pp. 76–77.) Plaintiffs did not prove, and the trial court did not find, that some alternative electoral system would have given any minority group the power to elect candidates of its choice at any time in the City's history. Accordingly, the fact that few Latinos have served on the Council—in addition to being irrelevant, as the question is whether *Latino-preferred* candidates have so served—says nothing about how many Latinos *should have* been elected to serve had Latinos voted cohesively throughout the City's history.

The facts found by the Court also do not support its conclusion of intentional discrimination. For example, the court acknowledged that the adoption of the City's current at-large elec-

toral system in the 1946 Charter was favored by prominent minority leaders and members of the local Committee on Interracial Progress (none of whom opposed the Charter). (Vol. 5, Ex. BB, p. 1078.) Yet the court nevertheless concluded that those who supported and adopted the Charter—which also contained an explicit *anti*-discrimination provision—were somehow motivated by an intent to discriminate *against* minorities. (See *id.*, pp. 1075, 1079.)

The trial court also inexplicably concluded that in 1946, proponents and opponents of the new Charter alike all understood “that at-large elections would diminish minorities’ influence on elections.” (Vol. 5, Ex. BB, p. 1080.) The reality is exactly the opposite. Plaintiffs could not identify a single member of any minority group in 1946 who (a) contended that at-large elections diminished minorities’ influence on elections, (b) advocated for districted elections, or (c) opposed the new Charter. The opponents of the 1946 Charter were *not* calling for district-based elections—rather, they wanted to retain the status quo of a three-commissioner, designated-post system that was far less favorable to minorities. (Vol. 2, Ex. E, p. 293.) The local newspaper even published an article titled, “New Charter Aids Racial Minorities,” which described a meeting with the local chapter of the NAACP, led by its chairman (who also publicly advocated for the new Charter), where it was pointed out that “the opportunity for representation in minority groups has been *increased* two and a half times over the present charter by expansion of the City Council from three to seven members.” (Vol. 2, Ex. E, pp. 288, 327, italics)

added.)

The trial court reached an equally outlandish conclusion in finding that the City Council decided in 1992 not to put district elections on the ballot because they were somehow intending to discriminate against minorities. Plaintiffs admit there is no evidence of racial animus on the part of the Council in 1992; in fact, the Council members consistently expressed a desire to *expand* minority representation. (Vol. 2, Ex. E, pp. 295, 335.) Plaintiffs' only argument about 1992, which the trial court accepted, was based on a single statement by a single Council member relating to preserving affordable housing. (Vol. 5, Ex. BB, p. 1083.) The City cannot find a single published decision grounding a weighty finding of intentional discrimination on anything so flimsy.

2. The City, its current Council members, and the public will be irreparably harmed without a stay.

If this Court ultimately reverses the judgment, then the enforcement of paragraph 9 during the pendency of the City's appeal will have worked irreparable harm on the City, its current Council members, and the public at large. Paragraph 9, if not stayed, will leave the City no choice but to immediately scrap its longstanding electoral system in favor of a district-based election scheme using the district maps drawn by plaintiffs' expert without any public input—the necessity and lawfulness of which are the very questions presented by this appeal. If this Court ultimately reverses on liability and/or remedy, then City and its voters will have gone

through an unnecessary and unlawful election process. The irreparable harms that will flow from that process include:

First, the current Council members will have lost much of the terms that they and their volunteers and financial supporters invested time and funds into winning.

Second, voters will have lost the representation of the candidates they preferred and elected. Notably, most of the City's current Council members were preferred by Latino voters. In the 2016 election, Tony Vazquez, one of two Latino-preferred candidates (see Vol. 2, Ex. E, p. 314), prevailed. He has since left the Council for a seat on the State Board of Equalization; the Council appointed Ana Jara, a Latina, to fill his seat for the balance of his term (until November 2020). (See Vol. 5, Ex. GG, pp. 1146, 1150-1152.) In the 2018 election, Latino voters' top three choices all won seats on the Council: Sue Himmelrich, Greg Morena, and Kevin McKeown. (See *id.* at p. 1142.)

Third, and relatedly, voters who elected the current Council members in 2016 and 2018 will have had their votes nullified—depriving these voters of their fundamental constitutional rights to have their voices heard in the electoral process. (Cal. Const., art. II, § 2.5 [“A voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted”]; see also *United States v. City of Houston* (S.D. Tex. 1992) 800 F.Supp. 504, 506 [“When elections have been held—even under a voting scheme that does not technically comply with section 5 [of the Voting Rights Act]—the people have chosen their representatives. Neither the Justice Department nor this court should lightly overturn

the people's choices."].)

Fourth, the City will have paid the County almost \$1 million for its assistance in providing computer records of voters' names and addresses, furnishing printed indices of voters to be used at polling places, and furnishing election equipment for a standalone election this summer. (Vol. 5, Ex. GG, pp. 1134, 1139.) That money will be unrecoverable.

Fifth, voters will have lost the electoral system that they have determined best suits their City, in part because it makes Council members accountable not just to a particular neighborhood, but to the City as a whole, and in part because it gives voters a say over every seat in elections held every two years, rather than a say over a single seat in elections held every four years. Santa Monica voters have twice overwhelmingly rejected proposals to abandon this system. (Vol. 2, Ex. E, pp. 294, 297.)

Sixth, if the City must hold an election before August 15, 2019, and if this Court later reverses the trial court's judgment, there would need to be yet *another* Council election for all seven Council members—which would be the third City Council election in a two-year span. In addition to the expenditure of time and resources by the City and the candidates, such a frequency of elections, under two entirely different schemes, would risk voter confusion and fatigue, and undermine voters' confidence in the electoral system.

3. Respondents' interests would not be harmed by a stay.

The City showed at trial why plaintiffs have not suffered

and will not suffer any harm from the continued maintenance of the current at-large election system. Latino-preferred candidates routinely get elected in Santa Monica. (Vol. 2, Ex. E, pp. 278–281.) And even if they did not, the City’s Latino voters are too few in number and too dispersed throughout the City for any alternative electoral scheme, including districts, to give them the ability to elect candidates of their choice. (*Id.*, pp. 281–284.) Put simply, there is no wrong to right in this case.

Even if the City’s basic demographic facts were different, and even if it were possible to create a district in which Latino voters could elect candidates of their choice, there still would be no prospect of real harm here. As noted above, the current Council members, who were elected in the 2016 and 2018 elections, were almost all preferred by Latino voters. Accordingly, removing this Council would, if anything, *harm* the interests of Latino voters, who would lose the benefit of the very representation they themselves sought at the polls, in favor of a brand-new election system that would threaten to dilute the voting power of Latinos citywide by fracturing their votes across seven districts. (E.g., Vol. 2, Ex. N, p. 496; cf. Phil Willon, *A Voting Law Meant to Increase Minority Representation has Generated Many More Lawsuits than Seats for People of Color* (L.A. Times, Apr. 7, 2017) [“The threat of legal action has forced cities to switch to council districts, but in some cases the move hasn’t resulted in more minority representation because the city already is well-integrated and drawing districts where minorities predominate is difficult.”].)

Finally, to the extent plaintiffs would suffer any harm at all

from a stay of paragraph 9, it would necessarily be of a short duration—the time required to dispose of this appeal. If the City is wrong, and the judgment is affirmed, the at-large election system will no longer be used to elect City Council members. But if the City is correct, and the judgment is reversed, the City and its voters will have incurred massive expenses and endured a great deal of disruption and uncertainty for no reason. The prospect of multiple elections, as well as uncertainty as to who will make decisions on the City's behalf even a few months hence, will interfere with the City's ability to govern itself.

In sum, even if plaintiffs might suffer any harm from a stay, it does not remotely compare with the harms the City and its voters will certainly suffer absent a stay.

VI. CONCLUSION

For these reasons, this Court should grant the City's petition for a writ of supersedeas, and it should confirm that paragraph 9 of the trial court's judgment is mandatory in effect, and thus automatically stayed during the pendency of the City's appeal. In the alternative, this Court should stay the enforcement of paragraph 9 of the trial court's judgment until the final resolution of this appeal.

DATED: March 8, 2019

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

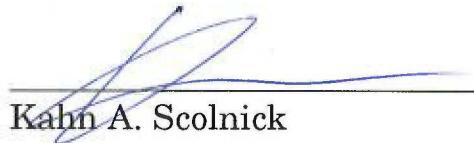
By: Theodore Boutros (Kers)
Theodore J. Boutros, Jr.

*Attorneys for Petitioner-Defendant
City of Santa Monica*

CERTIFICATION OF WORD COUNT

Pursuant to rules 8.204(c)(1) and 8.486(a)(6) of the California Rules of Court, the undersigned hereby certifies that this petition and the accompanying memorandum contain 13,227 words, as counted by the Microsoft Word word-processing program, excluding the tables, this certificate, the verification, and the signature blocks.

DATED: March 8, 2019



Kahn A. Scolnick

EXHIBIT N



Los Angeles County Registrar-Recorder/County Clerk

DEAN C. LOGAN
Registrar-Recorder/County Clerk

February 21, 2018

Denise Anderson-Warren, City Clerk
City of Santa Monica
1685 Main Street, Room 102
Santa Monica, CA 90401

ESTIMATED COST FOR A JULY 2, 2019 STANDALONE ELECTION

Dear Ms. Anderson-Warren:

As requested, the estimated cost for the City of Santa Monica to hold a July 2, 2019 Standalone Election with seven district office contests is \$875,000.

The estimated cost is based on the following voter counts: 71,403 registered voters and 37,265 permanent vote-by-mail voters. **Any changes in the election factors will impact the final costs for your jurisdiction.**

If you have any questions regarding this estimate, please contact Henrietta Willis-Kendall of my staff at (562) 462-2690.

Sincerely,

DEAN C. LOGAN
Registrar-Recorder/County Clerk

MARGARET PALACIOS, Manager
Fiscal Operations